



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

The Honorable Thomas M. Goff
Tom Green County Attorney
112 West Beauregard
San Angelo, Texas 76903

Letter Opinion No. 98-097

Re: Whether an elected official of a county who is a member of the salary grievance committee may vote on his own salary grievance (RQ-1107)

Dear Mr. Goff:

You ask whether an elected county official who is a member of the salary grievance committee may vote on his own salary grievance. Chapter 152 of the Local Government Code governs the compensation, expenses, and allowances paid to county officers and employees. The commissioners court sets the compensation, office and travel expenses, and other allowances for county and precinct officers and employees paid wholly from county funds.¹ An elected county or precinct officer who is aggrieved by the setting of his or her salary or personal expenses may request a hearing before the salary grievance committee.² A salary grievance committee is established in every county pursuant to section 152.014 of the Local Government Code. It may be composed of several officers, including the county judge, who is chairman of a committee but is not entitled to vote,³ and the number of public members necessary to provide nine voting members, or it may consist of nine public members, if the commissioners court votes to have nine public members on the committee.⁴

After the committee holds a public hearing on an officer's grievance, a vote is taken. If, after the hearing, six or more members of the committee vote to recommend an increase, the committee shall submit its recommendation to the commissioners court in writing. If six to eight members vote to recommend the increase, the commissioners court shall consider the recommendation at its next meeting. If nine members vote to recommend the increase and sign the recommendation, the

¹Local Gov't Code § 152.011.

²*Id.* § 152.016(a).

³*Id.* § 152.014(b).

⁴*Id.* § 152.014(a)(1). The officers to be on the committee consist of the sheriff, county tax assessor-collector, county treasurer, county clerk, district clerk, and the county attorney or criminal district attorney.

commissioners court shall include the increase in the budget.⁵ Neither the agreement of the county auditor nor the commissioners court is required to make the salary increase effective.⁶ Thus, the salary grievance committee actually sets the officer's salary when nine members vote in favor of the increase. It may even approve a salary increase in excess of the amount that the officer requested.⁷

The salary grievance committee in Tom Green County is composed of the county judge, six elected officials, and three public members, pursuant to section 152.014(a)(1) of the Local Government Code. You have asked whether an elected county official who is a member of the grievance committee may vote on his own salary grievance. You point out that the committee's recommendation could not be binding on the court unless all nine voting members, including the official who has brought the grievance, were able to vote for of it. If they are required to abstain from voting on their own grievances, they would be unable to receive nine votes to make the recommendation binding on the court, and this solution to a grievance would not be available to them.

Chapter 171 of the Local Government Code regulates conflicts of interest involving officers of counties and other local governments. It applies to a "[l]ocal public official," defined as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any . . . county . . . who exercises responsibilities beyond those that are advisory in nature."⁸ We will assume, without deciding, that a member of the county salary grievance committee is a local public official within this definition, at least when nine members of the committee vote in favor of a salary increase.

A local public official who has a substantial interest in a business entity or property must refrain from participating in a "vote or decision on any matter involving the business entity or . . . property," if action on the matter will have a special economic effect on the business entity or on the value of the property.⁹ A local public officer is also prohibited from knowingly acting as surety for a business entity that has work, business, or a contract with the governmental entity or acting as surety on an officer's compensation bond required of an officer of the governmental entity.¹⁰

⁵*Id.*

⁶*Jackson v. Leonard*, 578 S.W.2d 879, 882 (Tex. Civ. App.--Houston [14th Dist.] 1979, writ ref'd n.r.e.).

⁷See Attorney General Opinion MW-366 (1981).

⁸Local Gov't Code § 171.001(1).

⁹*Id.* § 171.004(a).

¹⁰*Id.* § 171.003.

An elected officer on the salary grievance committee has a pecuniary interest in his or her salary, the subject of a grievance before the committee, but chapter 171 of the Local Government Code does not apply to that interest.¹¹ A county officer's compensation from the county does not invoke provisions of chapter 171, Local Government Code, relating to an interest in real property or acting as a surety. Nor is a county officer's interest in his or her compensation from the county an interest in a business entity.¹² Chapter 171 of the Local Government Code does not require a member of the salary grievance committee to recuse him or herself from the vote on his or her grievance.

We find no other provision applicable to this situation, and you have cited none. Members of the commissioners court also participate in setting their own salaries and expenses pursuant to section 152.011 of the Local Government Code, which authorizes the commissioners court to set "the amount of compensation, office and travel expenses, and all other allowances for county and precinct officers and employees paid wholly from county funds," including themselves.¹³ Accordingly, we conclude that a member of the salary grievance committee is not barred from voting on his or her own salary grievance.

¹¹The provisions of chapter 171 relating to an interest in real property or acting as a surety are not relevant to these facts.

¹²A city is not a business entity within subchapter 171 of the Local Government Code, but a political entity or subdivision for local governmental purposes. Attorney General Opinion DM-267 (1993) at 2; *see also* Attorney General Opinion JM-852 (1988) at 3-4 (state university is not business entity).

¹³*See* Attorney General Opinion H-992 (1977).

S U M M A R Y

The county salary grievance committee, established pursuant to section 152.014 of the Local Government Code, acts to set an officer's salary when nine members of the committee respond to that officer's grievance by voting in favor of increasing his or her salary. A member of the salary grievance committee is not barred from voting on his or her own salary grievance by chapter 171 of the Local Government Code.

Yours very truly,

A handwritten signature in black ink that reads "Susan L. Garrison". The signature is written in a cursive style with a large, prominent "S" and "G".

Susan L. Garrison
Assistant Attorney General
Opinion Committee