

County of Nueces

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Opinion Committee

RQ-52

March 11, 1991

The Honorable Dan Morales  
Attorney General  
Opinion Section  
Supreme Court Building  
P. O. Box 12548 Capitol Station  
Austin, Texas 78711

RE: Request for Attorney General Opinion

Dear General Morales:

Please accept this letter as a formal request for an attorney general's opinion regarding the following matter:

FACTS

Nueces County presently has eight district courts. Each district court appoints an official court reporter who serves in that court. The eight district judges meet on a periodic basis as the Board of Judges to set administrative rules for the conduct of the courts' business. Recently, the Board of Judges met and citing Section 152.905 of the Local Government Code set the salaries for all court reporters. One district judge, however, disagreed with the decision and set the salary of his official court reporter at a different level. That particular district judge cited Section 52.051 of the Government Code as authority for his actions. The level of the salary was within the maximum allowed by all statutory authority. The Commissioners court requested an opinion from this office regarding whether the salaries should be set by the Board of Judges acting as a body or whether each judge can set the salary for his particular court reporter. This office rendered an opinion which did not settle the matter and the question remains unsettled.

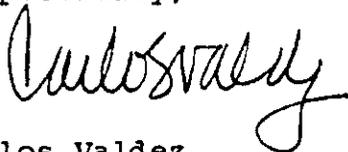
QUESTIONS PRESENTED

1. Does Section 152.905 require all district judges in a county to participate in setting the salaries for all official court reporters in the county?

2. Can each district judge set the salary of the official court reporter in his particular court so long as all statutory requirements are met?

I appreciate your kind attention to this matter. I enclose herewith a memorandum of law that this office prepared. Should you have any questions or require any additional information do not hesitate to contact me. If possible can you fax us your opinion, our fax number is (512) 888-0700.

Respectfully,



Carlos Valdez  
Nueces County Attorney

CV:jml

MEMORANDUM OF LAW  
RE: OFFICIAL COURT REPORTERS SALARIES

Section 52.051(a) of the Government Code provides that, "An official district court reporter shall be paid a salary set by the order of the judge of the court." (emphasis added). Section 152.905 of the Local Government Code sets out the procedure to be followed when setting the compensation as allowed under the previous section. These two statutes can be interpreted and harmonized without harming the legislative intent of either one.

According to subsection (c) of Section 52.051 of the Government Code, "An order increasing the salary of an official district court reporter must be submitted to the commissioners court . . . not later than September 1 . . ." The commissioners court can allow an extension of the time limit. Before a district court can do this, however, the judge must abide by the procedure set out in Section (b), (c), and (d) of Section 152.905 of the Local Government Code.

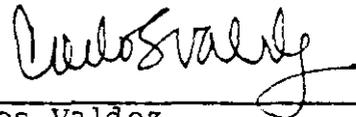
If the legislature had intended to authorize the board of judges to set the salaries of all court reporters by majority vote, it could have expressly provided so by statute. See, for example, Section 152.031 of the Local Government Code, (Salary of the County Auditor). It is apparent from the sections cited that the legislature intended each judge to set the salary of the official court reporter of each court using the procedure provided.

It is not required by law that all district judges participate in setting the salaries for the court reporters in any particular county. In Mays v. Fifth Court of Appeals, (1988), 755 S.W.2d 78, the Supreme Court pointed out in its recitation of facts that "Some District Judges of Dallas County ordered a 5% salary increase for their court reporters pursuant to that statutory authority." This would seem to indicate that each individual judge should have control and authority to set the salary of their official court reporter regardless of what the other judges do. It is not necessary or mandatory that they act in unison in setting these salaries.

CONCLUSION

Section 152.905 of the Local Government Code does not authorize the board of judges, by majority vote, to set the salaries of all court reporters. It merely sets out the procedure to follow in setting the salaries. Section 52.051(a) of the Government Code authorizes each individual district judge to set the salary for his official court reporter as long as all other legal requirements are met.

Respectfully submitted,



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Carlos Valdez  
Nueces County Attorney

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