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**Opinion Committee**

June 4, 1991

Certified Mail No. P 882 496 989

The Honorable Dan Morales  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711-2548

Dear Sir,

Pursuant to V.T.C.A., Government Code, section 402.043, I request your opinion in regard to the following questions that have arisen in my jurisdiction with respect to the appointment of a court reporter for a County Court at Law, Denton County, Texas.

The Facts

Recently, one of the judges presiding over a County Court at Law appointed his own court reporter and also set her salary without the approval of the Commissioners Court.

Issues Presented

a) Does V.T.C.A., Local Government Code section 152.905 allow District Judges to set compensation for all court reporters or just district court reporters?

b) Who has the authority to set the salary for court reporters in the County Courts at Law in Denton County?

## Analysis

Section 152.905 of the Local Government Code is a specific section which sets forth procedures for setting compensation of the county auditor, assistant auditors, and court reporters. This section states that the district judge or judges shall set the compensation of the court reporters. However, this section is unclear as to which court reporters: the district court reporters or the district and county court at law court reporters.

Section 52.051 of the Government Code refers to the compensation of district court reporters and states that the judge of the court shall set the salary of an official district court reporter. Section 152.011 of the Local Government Code states that the Commissioners Court shall set the salary for county and precinct officers and employees who are paid wholly from county funds. These three statutes clearly indicate that a district judge can and shall set the district court reporter's salary, but is unclear as to who sets the salary for a county court at law court reporter.

The Gill-Massar vs. Dallas County Commissioners Court, 781 S.W.2d 612 (Tex.App.-Dallas 1989 no writ) held that two county criminal court judges could order a salary increase pursuant to section 52.051, Government Code, even though the statute expressly applies to district court reporters. The reasoning behind this decision is distinguished from Denton County's situation in the following manner:

Implied Repeal Argument. The Gill-Massar case, as dicta, states that both section 52.051, Government Code, and section 152.011, Local Government Code may be interpreted as delegating authority to set court reporter's salaries. "Section 52.051 expressly delegates this authority to judges while section 152.011 delegates authority to the Commissioners Court to set salaries for county employees." In harmonizing these statutes, the court looks at who is a county employee and who is a state employee. The Court stated "District Court employees, even if paid from county funds, may be considered State employees because they are covered in the Government Code rather than the Local Government Code", thus "court reporters are not "county employees" as that term is used in section 152.011." The court's analysis, that those employees covered in the Government Code are State employees and those employees covered in the Local Government Code are County employees, is not sound. See Crane vs. State of Texas, 759 F.2d 412 (1985) where the court held that the district attorney was not a state official, but a county official, therefore 11th Amendment immunity would not apply to the district attorney, even though the district attorney is covered in the Government Code.

Source Law Argument. In the Gill-Massar case the court stated that County Criminal Court reporters shall be paid in accordance with how the district court reporters are paid. The reason the court held this way was based upon the prior law before codification.

Dallas County source law stated that county criminal court reporters "shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are in said laws provided for the stenographers of the District Courts of this State, and also be governed by any other laws covering the stenographers of the District Courts of this State." Tex. Rev. Civ. Stat. Ann., Article 1970-13.11, section 12 (repealed 1985).

The Gill-Massar case is distinguished from the Denton County situation because Denton County source law states that "the judge of the county court at law shall appoint an official court reporter ... and compensation shall be fixed by the Commissioners Court of Denton County." Tex. Rev. Civ. Stat. Ann., Article 1970-352, section 4b (repealed 1985).

The Code Construction Act, section 311.001 et seq., of the government Code states that "in interpreting a statute, a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy." In the Local Government Code, the legislature expressly declared that the act was intended as a recodification only and no "substantive change" in the law was intended. V.T.C.A., Local Government Code, section 1.001(a).

### Conclusion

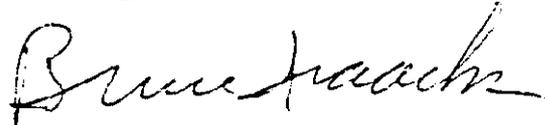
According to V.T.C.A. Government Code section 312.005, legislative intent is a primary consideration in interpreting a statute. It seems that the old statute governing Denton County Court at Law reporters is quite specific and spells out how they are to be appointed and who approves their salary. Nowhere in this statute are they compared to district court reporters and for this reason I feel that the approval of County Court at Law reporters and also the determination of their salary should continue to rest with the Commissioners Court.

Certification

I hereby certify, because this office represents the citizens of Denton County, that this question of law affects matters within the jurisdiction of my office, and constitutes a matter in which the State is "interested". I also certify that this matter is not currently in litigation.

Should you require additional information, please contact Assistant Civil Attorney, Pam Wells at 1-800-346-3189 or (817) 383-8399.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Issacks".

Bruce Issacks  
Criminal District Attorney  
Denton County, Texas