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RQ # 271

State of Texas  
District Attorney Office  
64th & 242nd Judicial Districts

AREA CODE 806 296-2416 -- 293-8481  
COUNTIES OF HALE AND SWISHER  
HALE COUNTY COURTHOUSE

Plainview, Texas 79072

November 20, 1991

ID # 14346  
MS

Honorable Dan Morales  
Attorney General, State of Texas  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

RECEIVED  
DEC 02 91

ATTENTION: OPINIONS COMMITTEE

RE: IS THE PAYMENT RECEIVED BY A COUNTY JUDGE FOR SERVING ON A JUVENILE BOARD INCLUDED IN THE COMPUTATION OF THE "COMPENSATION AND ALLOWANCES RECEIVED FROM ALL SOURCES" WITHIN THE MEANING OF SUCH TERM IN SECTION 152.032 OF THE TEXAS LOCAL GOVERNMENT CODE, LIMITING THE COMPENSATION RECEIVED BY A COUNTY AUDITOR IN A COUNTY WHERE THE COUNTY JUDGE IS HIGHEST PAID ELECTED COUNTY OFFICER.

Dear General Morales:

In Authority with Section 402.043 of the Texas Government Code, I request an opinion regarding whether a payment received by a county judge for serving on a juvenile board compensation or allowances for purposes of Section 152.032 where the county judge is the highest paid elected county official in a county.

FACTUAL BACKGROUND:

On September 5, 1991, the District Judges of the 64th and 242nd Judicial Districts in Hale County, Texas approved a salary raise of the County Auditor of Hale County, Texas for 1992 to the amount of \$30,000 dollars. The salary for the auditor in 1991 is \$24,400. The County Judge of Hale County, Texas is the highest paid elected county officer in Hale County, Texas. The commissioners court of Hale County, Texas have set the County Judge's salary for 1992 at \$28,860. The County Judge for Hale County, Texas also receives \$1200 annually as compensation for serving as a member of the juvenile board of Castro, Hale, and Swisher Counties, Texas.

The Texas Local Government Code does not offer clear guidance as to whether the allowances received by a county judge while serving on a juvenile board is included in the computation of his compensation for purposes of Section 152.032 of the Code. To my knowledge, case law has not precisely addressed the issue presented for consideration. On behalf of the commissioners court of Hale County, Texas, I propose the following question for your opinion:

QUESTION PRESENTED:

IS THE PAYMENT RECEIVED BY A COUNTY JUDGE FOR SERVING ON A JUVENILE BOARD INCLUDED IN THE COMPUTATION OF THE "COMPENSATION AND ALLOWANCES RECEIVED FROM ALL SOURCES" WITHIN THE MEANING OF SUCH TERM IN SECTION 152.032 OF THE TEXAS LOCAL GOVERNMENT CODE, LIMITING THE COMPENSATION RECEIVED BY A COUNTY AUDITOR IN A COUNTY WHERE THE COUNTY JUDGE IS THE HIGHEST PAID ELECTED COUNTY OFFICER.

LIST OF STATUTORY AUTHORITIES

The statutes which might influence an opinion are as follows:

TEXAS LOCAL GOVERNMENT CODE

SECTION 152.011  
SECTION 152.013  
SECTION 152.031  
SECTION 152.032

TEXAS HUMAN RESOURCES CODE

152.0003  
152.0411

BRIEF

Under Section 152.032 of the Local Government Code, the amount of the compensation and allowances of a county auditor may not exceed the amount of the compensation and allowances received from all sources by the highest paid elected county officer. The salary of the auditor, along with other allowances, is set after public hearing by the district judges who appoint the auditor, pursuant to Section 152.031. The salary of a county judge in a county of less than 1.7 million inhabitants is set by the commissioners court under Section 152.013 of the Local Government Code. The County Judge of Hale County, Texas is a member of the juvenile board of Castro, Hale and Swisher Counties, Texas pursuant to Section 152.0411 (a) of the Texas Human Resources Code. Section 152.003 of the Human Resources Code states that the compensation authorized under Chapter 152 of the Code for a judge serving on a juvenile board is in addition to all other compensation provided or allowed by law for a judge. Section 152.0411 (c) of the Code mandates that the commissioners courts of the counties pay the members of the juvenile board an annual salary set by the commissioners court at not less than \$1200 annually, payable in equal monthly installments from the general fund of the counties. A reading of Section 152.032 would seem to reveal that any compensation or allowances paid to the highest paid elected county officer for duties pertaining to his office should be included in the computation of his compensation when figuring the limitations on the county auditor's salary. Though this interpretation seems clear, there is no definition of the term "compensation and allowances received from all sources" within Section 152.032 to base the limitation on an auditor's

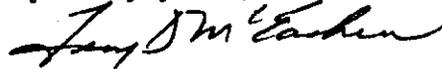
salary. Does this definition include fees a county judge receives for performing marriages if the judge is the highest paid elected officer? Does this term include travel, mileage, dues for conferences, longevity and these type of allowances? To the knowledge of this counsel, the statutes and case law offer no true answer.

#### SUMMARY

I propose that under Section 152.032 of the Texas Local Government Code and Sections 152.0003 and 152.0411 of the Texas Human Resources Code that the compensation received by the County Judge of Hale County, Texas for serving on the juvenile board of the county is within the definition of compensation and allowances received from all sources under Section 152.032 and should be calculated into his salary where he is the highest paid elected officer in the county when setting the salary of the county auditor.

The commissioners court of Hale County, Texas would sincerely appreciate a prompt reply so that we may hopefully resolve a dilemma in our budget process in Hale County, Texas.

Very truly yours,



Terry D. McEachern  
District Attorney  
Hale County, Texas