



RQ-826

ROBERT HILL TRAPP
CRIMINAL DISTRICT ATTORNEY
SAN JACINTO COUNTY

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Opinion Committee

(409) 653-2601
(409) 653-4865
(409) 653-2143 FAX

P.O. BOX 430
COLDSRING, TEXAS 77331

March 22, 1995

Attorney General Dan Morales
P. O. Box 12548
Austin, Texas 78711-2548

Attention: Opinions Committee

Dear Sir:

SJS
CERTIFIED MAIL
Return Receipt Requested
34655
FILE # ALC-32701-95
I.D. # 32701 RQ-00826-Dm

By this letter I am formally requesting an attorney general's letter opinion on the below-described matter. The issue has been researched by our office and included below is a brief of all pertinent facts and citations to all relevant statutes and attorney general's opinions located during our research. Also included is the question we are posing and the conclusion we have reached based upon our research.

FACTS

On December 21, 1994, the San Jacinto County Commissioner's Court approved a salary increase of \$1,000 per year for elected officials for the 1995 fiscal year beginning January 1, 1995. The actual approval of this budget occurred by unanimous vote of the Commissioner's Court January 9, 1995.

The newly elected county judge, Robert E. Smith, later determined the salary increase for the elected officials had possibly not been properly done and requested an opinion from the Criminal District Attorney's Office of the county.

The Criminal District Attorney's Office researched the issue and determined that the procedure for setting salaries for elected officials is governed by Section 152.013, Texas Local Government Code. (Formerly Article 3912K, V. T. C. S.).

Specifically, the Criminal District Attorney's Office determined that the Commissioner's Court had not complied with Section 152.013(b), Texas Local Government Code, which requires notice of the proposed salaries, expenses or allowances to be increased and amounts to be published in a newspaper of general circulation in the county before the 10th day before the budget hearing. The Criminal District Attorney informed the county judge that, based on the lack of Section 152.013(b) notice, the \$1,000 salary increase for elected officials was invalid and that the elected officials could only be paid at the salary figure set for the previous fiscal year. In researching the issue and making it's determination the Criminal District Attorney's Office also cited numerous attorney general opinions previously published on the same issue. (LO 94-004, LO-88-87, JM-27, MW-516).

The Criminal District Attorney's Office also informed the county judge that, under Section 152.016, Texas Local Government Code (formerly Article 3912K, Section 2(d), V.T.C.S.), the elected officials could avail themselves of the salary grievance procedure for elected officials by filing written notice within five days.

The elected officials were formally notified of the determination that the salary increase was invalid during a meeting of the commissioner's court March 13, 1995. Thirteen (13) of eighteen (18) elected officials availed themselves of the grievance procedure and filed written requests for a hearing.

On Monday, March 20, 1995, the full nine member salary grievance committee voted unanimously to grant the \$1,000 salary increase to the aggrieved elected officials, effective at the earliest date allowable by law. A signed recommendation to that effect is being forwarded to the commissioner's court.

However, reading Section 152.016^o indicates "If nine members vote to recommend the increase and sign the recommendation, the commissioners court shall include the increase in the budget before the budget is filed and the increase takes effect in the next budget year." It appears the statute was constructed in order to allow grievances to be raised prior to the beginning of the fiscal year, before the budget is adopted. If the salary increase recommended by the San Jacinto County salary grievance committee on March 20, 1995 during the 1995 fiscal year goes into effect during the "next budget year", that would necessarily mean the budget year beginning January 1, 1996, under a plain reading of the statute. This is quite different from the outcome of the grievance process under the former Article 3912K utilized by the Fort Bend County elected officials in 1981. In that case, the published notice was given, but was determined by the district attorney not to be timely and therefore invalid. Notice that the salary increase was invalid was given to the elected officials after the fiscal year began, January 1, 1981. The elected officials promptly availed themselves of the salary grievance procedure under 3912K. The salary

grievance committee awarded the increase, effective March 1, 1981. The attorney general's office determined that the 1981 salaries of county and precinct officers remained at their 1980 levels until the recommendations of the grievance committee became effective on March 1, 1981. (MW-516).

If Section 152.016, Texas Local Government Code is interpreted as requiring the recommendation of the San Jacinto County salary grievance committee to go into effect January 1, 1996, this may then pose a "due process" problem under the 14th Amendment to the United States Constitution or Article 1, Section 19 of the Texas Constitution for elected officials who are made aware of procedural errors invalidating a salary increase after the fiscal year begins. The net effect of requiring the increase to go into effect in 1996 would be to negate any effect of the salary grievance process after the beginning of the fiscal year. Those aggrieved officials would achieve the same result by simply waiting for the 1996 budget process to begin in late 1995 and requesting the same increase then.

QUESTION

1. When does the salary increase recommended for the thirteen aggrieved elected San Jacinto County officials become effective?

CONCLUSION

A plain reading of Section 152.016, Texas Local Government Code indicates that any salary increase awarded to the thirteen aggrieved elected officials should go into effect in the "next budget year". When this recommendation was made by the salary grievance committee on March 20, 1995, the next budget year is fiscal year 1996 which begins January 1, 1996. The salary increase would begin January 1, 1996.

If the elected officials become aware of procedural problems invalidating a salary increase after the fiscal year begins, a "due process" problem may arise as the net effect of the plain reading of Section 152.016 serves to negate the salary grievance process after the fiscal year begins. The aggrieved elected officials would have the same recourse by simply waiting until the budget process begins for fiscal year 1996 and seeking the same increase.

Respectfully yours,

Robert Hill Trapp

Robert Hill Trapp
Criminal District Attorney
San Jacinto County, Texas