

Office of the
GUADALUPE
COUNTY ATTORNEY

FILE # ML-41272-00
I.D. # 41272

BOB COVINGTON
County Attorney

RQ-0187-JC

RECEIVED

Assistant County Atty.

FEB 15 2000

February 11, 2000

Elizabeth D. Branch
S. Todd Gibson
C. Mark Nelon
Michael J. Morris

OPINION COMMITTEE

Honorable John Cornyn
Attorney General for the State of Texas
P.O. Box 12548
Austin, Texas 78711-2548

RE: Opinion Request — Guadalupe County
Validity of the increases of the salaries, expenses, and other
allowances of the elected officials adopted by the Commissioners
Court

Office Manager
HerLinda Rangel

Dear Sir,

Your opinion is requested in the following matter:

Intake Administrator
Victim Assistance
Gail Younger

BACKGROUND

Restitution
Check Fraud
Martha Krametbauer

The Guadalupe County Commissioners Court published a notice pursuant to section 152.013(b) of the Local Government Code on August 8, 1999. The notice contained the statutorily required information concerning a proposed increase in the salaries of the elected officials of approximately 3%.* On August 10th and 11th, the Commissioners Court held public workshops to address issues concerning the budget, including the proposed increases. As a result of the workshops, the Commissioners Court agreed to consider raising the amount of the increases to 8% for most of the elected officials, 19.6% for the County Commissioners, and various other amounts for other officials. The Seguin Gazette-Enterprise published two front page articles detailing the suggested adjustments to the proposed increases on August 12th and August 15th. On August 22nd, the Commissioners Court published an amended 152.013(b) notice.* On August 24th, the Commissioners Court held its public hearing on the budget, including the proposed increases in the salaries, expenses, and other allowances of the elected officials. The hearing was well attended by the public, and a number of individuals addressed the Court concerning the proposed increases. At the conclusion of the hearing, the Commissioners Court adopted the budget, including

Court Coordinator
Kim Stange

Juvenile Justice
Bond Forfeiture
Karen Nelson

*The notice published by the Commissioners Court included details of state-funded supplements that were approved by the Texas Legislature. Because these supplements were not subject to change by the Commissioners Court and are irrelevant to the issues being presented, the information concerning these state-funded supplements has been omitted from this request.

the proposed increases, as adjusted at the public workshop. The increases in the salaries, expenses, and other allowances approved by the Commissioners Court and at issue herein are summarized as follows:

County Judge — 7.35%	County Attorney — 8%
Comm'r Pct. 1 — 19.59%	County Treasurer — 23.08%
Comm'r Pct. 2 — 19.59%	County Tax Assessor-Collector — 18.64%
Comm'r Pct. 3 — 19.59%	Constable, Precinct 3 — 15.56%
Comm'r Pct. 4 — 19.59%	Constable, Precinct 4 — 31.01%
County Clerk — 8%	Justice, Precinct 1 — 4.89%
County Court at Law Judge — 8%	Justice, Precinct 2 — 21.18%
District Clerk — 20.31%	Justice, Precinct 3 — 27.10%
County Sheriff — 13.01%	Justice, Precinct 4 — 13.33%

QUESTIONS

1. Whether the notices published by the Guadalupe County Commissioners Court were sufficient to satisfy the requirements of section 152.013(b) of the Local Government Code?
2. Whether the amount of the adopted increases of the salaries, expenses, and other allowances of elected officials may exceed the amount of the proposed increases published in the 152.013(b) notice?
3. Whether the increases of the salaries, expenses, and other allowances of the elected officials adopted by the Guadalupe County Commissioners are valid?

DISCUSSION

The notices published were sufficient to satisfy the section 152.013(b) requirement in the absence of any authority prohibiting the Commissioners Court from approving an increase in the salaries, expenses, and other allowances of an elected official that is either higher or lower than the amount of the proposed increase published in the 152.013(b) notice.

The salaries, expenses, and other allowances of the elected county and precinct officials are to be set by the commissioners court at a regular meeting of the court during the budget hearing and adoption proceedings. *See* TEX. LOC. GOV'T CODE ANN. § 152.013 (Vernon 1988). A commissioners court must publish public notice of any proposed increases and the amount of the proposed increases in the salary, expenses, or other allowances of an elected official before the 10th day before the public hearing. *See* TEX. LOC. GOV'T CODE ANN. § 152.013(b) (Vernon 1988). The Attorney General has opined on a number of occasions that the failure to publish *any* notices pursuant to section 152.013(b) will nullify the adopted increases of the salaries, expenses, and other allowances of the elected officials. *See* OP. TEX. ATT'Y GEN. DM-405 (1996) (raises invalid in absence of published notice and when grievance committee met at unauthorized time); OP. TEX. ATT'Y GEN. LO 95-018 (1995) (raises invalid in absence of published notice, publication after approval not a valid remedy); OP. TEX. ATT'Y GEN. LO 94-004 (1994) (raises invalid in absence of a published notice); OP. TEX. ATT'Y GEN. MW-516 (1982) (raises invalid when notice published after approval). *But see Neptune v. Renfro*, 586 S.W.2d 596 (Tex.Civ.App.--Austin 1979, no writ) (in absence of published notice, raises were not a nullity in the absence of some proof that either the action was taken arbitrarily over timely objection, the action was harmful to the taxpayers, or that the action would have resulted in a budget exceeding expected revenues). The State can find no authority addressing whether a commissioners court may approve an increase in salary, expenses, or other allowances of an elected official that is either higher or lower than the amount of the proposed increase published in the

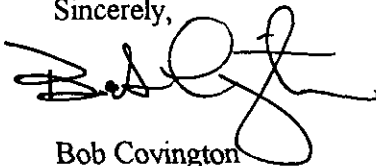
section 152.013(b) notice.

In the absence of any authority to the contrary, it appears that a commissioners court may approve an increase that is either higher or lower than the amount of the increase published in the section 152.013(b) notice. The express language of the statute does not prohibit a variance. Thus, the statute does not appear to prohibit an approved increase that exceeds the amount of the proposed increase. Further, to prohibit a variance would force a commissioners court to take an "all or nothing" approach when considering the amount of the increases to the salaries, expenses, and other allowances of an elected official. Certainly, the statute is not intended to prohibit a commissioners court from approving an increase that is either lower or higher than the increase originally proposed.

Furthermore, the Commissioners Court's compliance with section 152.013 was sufficient to satisfy the intent of the statute. Section 152.013 ensures the public's awareness and ability to participate in budgetary decisions, especially when elected officials raise their own salaries. In this case, the Commissioners Court published two separate notices. The first was published more than two weeks before the scheduled public hearing. The second was published two days before the hearing. In the intervening period, the Commissioners Court held public workshops to address various issues concerning the proposed budget, including the proposed increases. The Seguin Gazette-Enterprise published two front page articles concerning the details of the proposed increases as adjusted at the public workshop. The final public hearing was attended by more than a hundred members of the public. Twenty-five people asked to address the Commissioners Court and each was granted permission. Considering the notices published, the amount of publicity, and the amount of public participation in the process, it is clear that the Commissioners Court sufficiently satisfied the requirements of section 152.013. *Cf. Chumney v. Craig*, 805 S.W.2d 864, 869-70 (Tex.App.--Waco 1991, writ denied); *Neptune*, 586 S.W.2d at 599.

Please find enclosed a more detailed discussion of the facts and the issues presented. If you are in need of any additional information, please do not hesitate to contact me. I appreciate your assistance in this matter.

Sincerely,



Bob Covington
Guadalupe County Attorney

cc: Honorable James E. Sagebiel, County Judge
Kristen Klein, County Auditor

ENCL(3)