



BEN W. "Bud" CHILDERS
County Attorney

COUNTY ATTORNEY
Fort Bend County, Texas

RQ-0278-JC

(281) 341-4555
Fax (281) 341-4557

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OPEN RECORDS DIVISION

FILE # ML-41615-00

I.D. # 41615

OPINION COMM. ...

August 28 2000

The Honorable John Cornyn
Office of the Attorney General
P.O. Box 12545
Austin, Texas 78711-2548

CMRRR NO. 7099 3400 0014 2764 9902

Re: Request for Attorney General Opinion as to whether Human Resources Code § 152.0851 require the County to pay County Court at Law Judges more than the minimum required salary of \$1,000 less than the District Court Judges?

Dear Attorney General Cornyn:

If the County Court at Law Judges of Fort Bend County are being paid \$1,000 less than the District Judges, does the Human Resources Code Section 152.0851 which requires the County Court at Law Judges to be paid the same amount as the County Judge for serving on the Juvenile Board, require the county to pay the CCL Judges more than the \$1,000 less than the District Judges?

Until September 1, 1992 when Fort Bend County opted into the judicial salary equalization program under V.T.C.A. Gov. Code § 25.005, the payroll records set out separately the payments of Juvenile Board pay to the CCL judges. After September 1, 1992 the payments were not reflected separately in the overall salary of the CCL judges who were paid the amount required by V.T.C.A. Gov. Code 25.005(a). See attached comparisons for the actual salaries paid to the District and County Court at law judges from 9/1/92 to 8/31/98.

The CCL judges feel they are not being paid in accordance with the requirements of V.T.C.A. Human Resources Code § 152.0851. See attached letter dated July 31, 2000 from Judge Susan Lowery, and the letter dated May 21, 2000 addressed to the Fort Bend County Commissioners Court from the three County Court at Law judges. The County Judge of Fort Bend County is currently paid \$7,200 per year for serving on the juvenile board.

Section 152.0851 Human Resources Code which creates the Fort Bend County Juvenile Board reads as follows:

“(a) The juvenile board of Fort Bend County is composed of the county judge, the district judges in Fort Bend County, and the judge of each county court at law.

(b) The commissioners court shall pay the board members annual additional compensation in an amount set by the commissioners court. The additional compensation shall be paid in equal monthly installments from the general fund of the county. The judge of a county court at law is entitled to receive the same amount of additional compensation as the county judge receives.

(c) Sections 152.0002, 152.0003, 152.0004, 152.0005, 152.0006, 152.0007 and 152.0008 do not apply to the juvenile board of Fort Bend County.”

Section 152.0003 Human Resources Code provides:

“The compensation authorized under this chapter for a judge serving on a juvenile board is in addition to all other compensation provided or allowed by law for a judge.”

Section 152.003 is not applicable to Fort Bend County as per § 152.0851(c) and thus removes the mandatory language requiring payment of the juvenile board salaries above all other compensation provided or allowed by law for a judge.

In Attorney General Opinion No. JM-1140 (1990), a similar question was posed on behalf of district judges when the legislature imposed a cap on district judges salaries. The Attorney General in construing § 152.0003 of the Human Resources Code concluded that “the compensation paid a district judge by the commissioners court for service on the County Juvenile Board is part of the judges combined yearly salary from the state and county sources and enters into determination of the amount of salary the judges may receive.”

This opinion was partly based on a prior opinion of the Attorney General:

“Attorney General Opinion H-123(1973) concluded that the compensation paid the judges of Travis County for service on the county juvenile board came within the limitations imposed upon compensation collected for service as a judge. The opinion suggested to permit a judge to hold two offices, one on a juvenile board and the other as a judge, for each of which he would be compensated, would run afoul of sections 33 and 40 of article XVI of the Texas Constitution. Attorney General Opinion H-461 (1974) concluded that the \$1,200 per annum paid the district judge in Winkler County was for service rendered as a compensation allowed for the judge.”

The Commissioners Court may pay any amount it wishes to CCL judges as they do not have a salary cap as do the District Judges, but the Commissioners Court is not required to pay any more than \$1,000 less than the District Judges receive. V.T.C.A. Gov. Code § 25.005(f) states:


“Subsection (e)(5) does not require a county to pay a salary that exceeds the minimum salary under Subsection (a).”

Please provide us with an answer to the question of whether or not Human Resources Code § 152.0851 requires the County to pay the Juvenile Board salary supplement over and above the minimum salary of \$1,000 less than the District Judges required by V.T.C.A. Gov. Code § 25.005(a)?

Sincerely,

BEN W. CHILDERS
COUNTY ATTORNEY

By:


David R. Hurley, Assistant County Attorney



COUNTY COURT AT LAW NO. 1

Fort Bend County, Texas



Larry Wagenbach
Judge

(281) 341-4415
Fax (281) 341-4456

TO: Honorable James Adolphus, County Judge
Commissioner R. L. "Bud" O'Shieles, Pct. 1
Commissioner Grady Prestage, Pct. 2
Commissioner Andy Meyers, Pct. 3
Commissioner James Patterson, Pct. 4

FROM: Judges *Wagenbach* McMeans, *Wagenbach* Larry Wagenbach and *Lowery* Susan Lowery

DATE: May 4, 2000

RE: Additional Compensation for Serving on the Juvenile Board

It has been increasingly humiliating and embarrassing to each of us to repeatedly have to defend our salaries and make demands that our salaries are in accordance with statutory mandates. Once again, we find that laws are not being followed.

At the workshop on May 2, 2000, Mr. Jim Allison, Attorney at Law for the Texas Association of Counties, advised:

The judge of a county court at law is entitled to receive the same amount of additional compensation as the county judge receives. § 152.0851, Human Resources Code.

Commissioners' Court budget's specific monies for the county judge to receive such "additional compensation", there is no such budgeted monies for the judges of the county courts at law. Therefore, pursuant to Mr. Allison's opinion, the judges of the county courts at law request that there be an immediate adjustment so that they receive "...the same additional compensation as the county judge..." for serving on the Juvenile Board which would not only include future but past services. Thereafter, the adjustments would bring our salaries in compliance with not only § 25.005, Government Code but also § 152.0851, Human Resources Code. Additionally, in accordance with a recent Attorney General's opinion we should receive interest on the past owed sum and an adjustment on our retirement contributions by the county.

cc: Mr. Bud Childers, County Attorney
Mr. Robert Grayless, Auditor
Mr. Jim Edwards, Budget Officer