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Ms. Susan Gusky
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OPINION COMMITTEE

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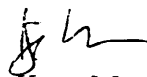
Dear Ms. Gusky,

In the last general election a write-in candidate was elected to the constable position for precincts 1 and 2 for Donley County, Texas. The position had been vacant since 1969 when the commissioners court authorized an annual salary of \$ 1.00. The Donley County Commissioners Court have three questions for which they seek your opinion:

1. Can the Donley County Commissioners Court set a salary based on the actual needs of precincts 1 and 2 ?
2. Can the salaries for different constables in the same county differ ?
3. Is the salary set by the Donley County Commissioners Court for the newly-elected position reasonable ?

I am enclosing my brief on the issues for your consideration. Thank you for your attention to this matter.

Respectfully,



Kaye Messer,
Donley County Attorney Pro Tem

ISSUE I

Can the Donley County Commissioners Court set a salary based on the actual needs of precincts 1 and 2 ?

The Texas Constitution requires the county to pay its constable a reasonable salary. In *Bomer v. Ector County Comm'r Court*, 676 SW 2d 662 (Tex App 1984), Ector County had not filled the constable's position since 1967 when the salary was fixed at \$1.00 per year. Appellants were elected and sought to raise the salary. The Commissioners Court raised the salary to \$ 20.00 per month finding the constable's work was being done by the sheriff's office. The Appellate Court found the County could continue to utilize the sheriff's office to perform those duties. Having virtually no duties to perform, the Appellants could not show the salary was unreasonable.

The logical conclusion to be reached in *Bomer* is that the reasonableness of a salary may be determined by the actual needs of the precinct involved and that a county can choose to use the sheriff's office to provide process servers virtually eliminating one of the statutory duties of the constable's office.

ISSUE II

Can the salaries for different constables in the same county differ ?

Next, the newly elected constable apparently seeks to receive the same pay as the constable for precincts 3 and 4. In a prior opinion, the Attorney General stated that it is not illegal for a commissioners court to reasonably prescribe different salaries for constables of different precincts. Tex Attorney Gen'l Op H-429 (1974). The Attorney General clarified its opinion following the Texas Supreme Court ruling in *Vondy v. Comm'r Court of Uvalde County*, 714 SW 2d 417 (1986). In a later opinion, the Attorney General stated that different salaries may be provided if the circumstances reasonably require it and if each salary itself is reasonable.

Clearly, if the Donley County Commissioners Court can enunciate a reasonable basis for differing salaries, all constable's salaries in the county need not be equal.

ISSUE III

Is the salary set by the Donley County Commissioners Court for the newly-elected position reasonable ?

A constable is required to attend each justice court held in his precinct. Tx Local Govt Sec. 86.024(e). A constable is also required to execute each warrant and citation which is directed to him by a lawful officer. Tx Local Govt Sec 86.021(a). These are the only statutorily delineated duties of the constable.

The constable position for precincts 1 and 2 in Donley County had been vacant since 1969 when the commissioners court authorized an annual salary of \$ 1.00. When the newly-elected constable signed up as a write-in candidate for the office, presumably he was aware of the existing salary.

Following the election, the Commissioners Court met to discuss the constable's salary. The justice of the peace for precincts 1 and 2 informed the Commissioners Court that, based on his past experience as justice of the peace, he anticipated hearing 6 to 12 cases per year with an average trial time of 2 hours. The sheriff informed the Commissioners Court that his office had adequately performed the constable's duties since 1969. He further stated he anticipated serving 114 local warrants and 59 citations throughout the year. Conceivably, the newly-elected constable may serve no process during his tenure and may be required to attend justice court for, at most, 24 hours per year.

Based on the information given them, the Commissioners Court passed a motion authorizing the constable's annual salary of \$ 3,170.00 plus a vehicle allowance of

\$100.00 per month and retirement. The Commissioners Court has stated a reasonable basis for the salary.

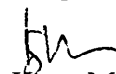
Donley County has a constable position for precincts 3 and 4. This position has been filled and utilized for over 20 years. The constable for precincts 3 and 4 is a "first response" officer. Generally, the sheriff's office dispatcher notifies this constable immediately in every matter requiring a law enforcement officer in the area. Unlike precincts 1 and 2, precincts 3 and 4 cover a rural area some distance from the sheriff's office. The county has found it expedient to utilize a constable located in the precinct to perform a wide variety of duties above and beyond mere process serving and attendance at infrequent justice court hearings. The constable for precincts 3 and 4 is paid an annual salary of \$ 17,146.95.

On the other hand, historically the County has elected to utilize only the sheriff's office to provide services in precincts 1 and 2. The only duties which the newly-elected constable must perform under the current circumstance is attendance in justice court for approximately 24 hours per year. There is a reasonable basis for providing different salaries in this matter.

Conclusion

The Donley County Commissioners Court can set the salary for the constable for precincts 1 and 2 based on the actual needs of the precincts; that salary can differ from the salary given the constable in precincts 3 and 4; and the salary set by the Commissioners Court is reasonable.

Respectfully Submitted,



Kaye Messer,
Donley County Attorney Pro Tem
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