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OPINION COMMITTEE

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FILE # ML-42454-02

February 15, 2002 I.D. # 42454

RQ-0513-JC

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

In Re: Requested Opinion of the following issue:

Whether Angelina County is now required to pay its two (2) County Court at Law Judges the salary outlined under Section 25.005(a) when the salary increase authorized by Section 25.005(e) in 1997 was Twenty Thousand and No/100 (\$20,000.00) Dollars and in 1998 was Twenty Four Thousand and No/100 (\$24,000.00) Dollars. These amounts were not budgeted by the Angelina County Commissioners Court even though the judges were paid all of the collected costs and fees which exceeded these figures.

Dear Mr. Cornyn:

An issue has arisen in reference to Section 25.005 of the Texas Government Code which concerns the salaries of two (2) County Court at Law Judges in Angelina County. We are seeking your guidance and opinion to help resolve this issue.

During late 1996 Angelina County decided to collect additional fees and costs allowed under Section 25.005. The 1996 budgeted salary of each County Court at Law Judge was Fifty Seven Thousand, Nine Hundred Thirty Nine and .75/100 (\$57,939.75) Dollars. In 1997 and 1998 each Angelina County Court at Law Judge was budgeted to receive Fifty Nine Thousand Nine Hundred Thirty Nine and no/100 (\$59,939.00) Dollars.

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When the additional fees (contemplated by the statute) were collected in 1997, each County Court at Law Judge received **Twenty Two Thousand One Hundred Seven and .62/100 (\$22,107.62) Dollars** in addition to their budgeted salary of **Fifty Nine Thousand Nine Hundred Thirty Nine and no/100 (\$59,939.00) Dollars** for a total salary of \$82,046.62. In 1998 each County Court at Law Judge received **Twenty Six Thousand Nine Hundred Thirty Nine and no/100 (\$26,939.00) Dollars** in addition to their budgeted salary of **Fifty Nine Thousand Nine Hundred Thirty Nine and no/100 (\$59,939.00) Dollars** for a total salary of **Eighty Six Thousand Eight Hundred Seventy Eight and no/100 (\$86,878.00) Dollars**. All money received from the state as excess fees and costs under this section were split equally between these two (2) judges. In addition to paying all of the money collected by Angelina County to the judges as salary, the county paid the retirement match on the excess funds which were divided between the two judges out of county funds independent of the funds collected from the comptroller.

The issue at hand is whether Angelina County should be required to pay additional money to the judges as outlined in section 25.005(a) for either or both 1997 and 1998 because the additional money (\$20,000.00 in 1997 and \$24,000.00 in 1998) was not set or budgeted by the Commissioners Court of Angelina County, Texas even though the judges ultimately received more than these required amounts.

The complaining County Court at Law Judge also argues that the county "did not increase the salaries of the two judges by September 1 of the initial year of participation as required by Section 25.005(e)". During August of 1996 and during the 1997 budget adoption, the commissioners court heard requests to participate in the supplemental salary program under Section 25.005. On August 27, 1996 the court passed a resolution to participate in the program. The first month that fees were collected was in November of 1996. In accordance with Article 51.702 of the Texas Government Code, the Comptroller's Office sent the first payment to the Angelina County Treasurer. Such payment was received in January 1997 and was paid as salary to the two County Court at Law judges. (See attached letter of transmittal.) I believe that the county did raise the salaries of the County Court at Law Judges in 1997 by making payments even though those amounts were not budgeted. I further believe that the County could not increase the salaries of the County Court at Law Judges by September 1, 1996 because the county's participation in the program was not certified by the Comptroller's office until November 1996.

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The complaining County Court at Law Judge also takes the position that both judges are entitled to the penalty provisions of Section 25.005(a) because of the failure of the county to properly budget the additional amounts. I will include an excerpt of a letter I have received from the former county court at Law judges legal counsel.

The judge believes that the language of the statute is plain and mandatory, and that since county did not budget the salary increase, the judges would therefore not receive any increase if the county decided to "opt out" of the program. The judge believes the statute required the county to increase the salary in order to prevent this possibility, and that by failing to comply with the law, the county is required to comply with the full salary requirements of Section 25.005(a). In taking this position, the judge relies upon Attorney General Opinion No. JC-0159, including the following language: "...the county could decide at the end of any year to rescind its authorization for the additional fees and costs collected under Section 51.702, thus freeing itself from compliance with Section 25.005." (Stating that such would be the county's capability if the county's compliance with the statute could be determined at a later date than the time the salary is budgeted.)"

Angelina County did not change the budgeted salary figure after beginning participation in the program for 1997 and 1998. When handled in this manner, it is easy for the auditor to tell when the judges have been paid \$20,000.00 and \$24,000.00 over the amount of the budgeted salary for the position. The complaining judge takes the position that he should be paid under the penalty provisions of 25.005 because the county failed to include the \$20,000.00 and \$24,000.00 in his budgeted salary in 1997 and 1998. In reading 25.005, I find no specific requirement that sets forth the county's duty to include the additional salary amounts specifically in its official budget. The statute does require that the judge be paid a specific amount. The distinction I believe in our situation and the situation referred to by the judge in reference to Attorney General Opinion JC-0159 is that Tom Green County did not pay the judge the appropriate portion of the excess payment in the year required, whereas Angelina County did.

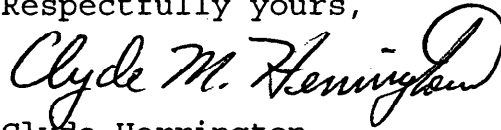
The County believes the budget omission was an oversight. It is undisputed that all collected fees and costs under this section were equally divided between the two (2) judges. The County is of the opinion that it has substantially complied with the statute and should not be penalized. Enclosed please find a copy of the response of the County dated November 4, 2001 furnished to opposing

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counsel with the exact salary computations.

If you require further information, please advise. We will await your opinion.

Respectfully yours,



Clyde Herrington
District Attorney, Angelina County

CMH:mp
Enclosure