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OPINION COMMITTEE

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FILE # ML-45584-08

I.D. # 45584

The Honorable Greg Abbott  
Attorney General  
209 W. 14<sup>th</sup> St.  
Austin, TX 78701

**RQ-0686-GA**

Dear Attorney General Abbott:

The Midland County Judge has asked me to request an opinion from your office regarding the ability of a County Commissioners Court to pay bonuses to elected officials. In my capacity as Midland County Attorney, and under the authority of *Tex. Gov't. Code §402.043*, I ask your opinion in regards to the following legal questions.

1. May a county pay a performance bonus to elected officials in addition to their salary?
2. If the answer to the first question is "yes", how must the Commissioners Court list the bonus in the publication of proposed salary increases?

The Midland County Judge is interested in adopting a plan which would authorize performance based bonuses for elected officials. Under this plan, the bonuses would be based upon some quantifiable system of measuring performance. If an elected official meets the stated performance goals during the budget year, a bonus would be awarded at that time. The plan would be approved by the Commissioners Court during the regular budget hearing and adoption proceedings, but the bonuses would be paid during the budget year. The bonus would not be paid unless the elected official met the stated performance goal.

Your office has previously stated that opinion that a Commissioners Court may pay bonuses to employees if the bonuses are paid as part of a bonus plan that was approved by the Court as part of employee compensation before the services are rendered. *Tex. Atty. Gen. Op. JM-1253 (1990)*. The bonuses would then not violate the constitutional prohibition against providing additional or retroactive compensation to employees for services already performed. *Tex. Const., Art. III, section 53*.

In *JM-1253*, the issue was whether a District Attorney could use drug seizure funds to pay bonuses or increase salaries for employee achievement. It appears from the opinion that the

bonus plan had not been approved prior to services being performed, and the bonuses were paid for prior achievement.

In *Letter Opinion No. 94-067* (1994), the issue was whether the board of directors of an appraisal district could pay bonuses to its employees if the bonuses were not included in the budget for that fiscal year.

In *Tex. Atty. Gen. Op. JC-0376* (2001) the issue was whether excess contributions refunded to a county could be paid as one-time salary supplements to county court employees.

In *Tex. Atty. Gen. Op. GA-0368* (2005) the issue was whether a city policy could authorize pay raises in the event of a high evaluation and provide that the increases start from the evaluation date.

In *Tex. Atty. Gen. Op. GA-0492* (2006) the issue was the legality of an incentive bonus plan based on measurable job performance for employees in departments that report directly to the Commissioners Court.

I have not been able to find any Attorney General Opinions or other authority discussing whether bonuses can be paid to elected officials if they are part of a bonus plan that is approved by the Commissioners Court prior to services being rendered.

The procedure for setting salaries for elected officials is set forth in Local Government Code § 152.013. The commissioners court is to set the salary, expenses, and other allowances of elected county at a regular meeting of the court during the regular budget hearing and adoption proceedings. Prior to the meeting, the commissioners court is to publish a notice of “(1) any salaries, expenses, or allowances that are proposed to be increased; and (2) the amount of the proposed increases.”

Salaries of county officers and employees may be increased or decreased only by amending the budget or adopting a new budget. *Tex. Att’y Gen. Op. JC-0147* (1999); *Tex. Atty Gen. Op. No. JM-1268* (1990); *Tex. Local Gov’t Code §§ 111.010, 152.013(a)*. There is no time limit on when a Commissioners Court may change the salaries of employees and non-elected county officers. They may be changed by a budget amendment at any time. *Tex. Att’y Gen. Op. JC-0147* (1999); *Tex. Atty Gen. Op. No. JM-326* (1985). The salaries of elected officers, however, may be changed only once a year, that being “during the regular budget hearing and adoption proceedings.” *Tex. Loc. Gov’t Code Ann. § 152.013(a)*.

The issue seems to be whether the change to the elected official’s salary occurs “during the regular budget hearing and adoption proceedings,” or whether it occurs during the year when the Commissioners Court determines whether the elected official has met the performance goal. The potential for payment of the bonus would be approved during the normal course of setting elected official salaries during the budget process. Final determination of whether any elected official would receive a bonus, however, would not be determined until after the budget year has begun.

If your answer to the first question is that a County may not pay performance bonuses to elected officials, then there is no need to answer the second question. If, however, your answer is that such bonuses may be paid, the next question is how must bonus be addressed in the publication of proposed salary increases?

The procedure for publishing proposed salary increases is set forth in Texas Local Government Code §152.013(b) which states:

‘(b) Before the 10th day before the date of the meeting, the commissioners court must publish in a newspaper of general circulation in the county a notice of:

(1) any salaries, expenses, or allowances that are proposed to be increased;

and

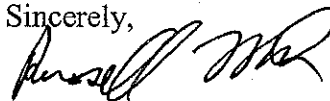
(2) the amount of the proposed increases.’

Your office has previously stated that “the required notice, posted under section 152.013(b), must inform the public of the maximum potential salary increases for elected county officials.” *Tex. Atty. Gen. Op. No. GA-0162 (2004)*; *Tex. Att’y Gen. Op. No. JC-0255 (2000)*. This would not appear to necessarily require that the potential bonus be listed separately in the notice, as long as the amount of the bonus is include in the amount of the proposed increase.

The purpose of requiring that the amount of the proposed increases be published is to “provides a mechanism for the public to scrutinize proposed salary increases for elected county and precinct officers.” This goal would be furthered by requiring that any potential performance based bonus be listed separately in the notice, and be identified as such.

Thank you for your assistance. Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,



Russell Malm

cc: Judge Bradford