



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

July 21, 1988

Honorable Terry McEachern
District Attorney
64th & 242nd Judicial Districts
Hale County Courthouse
Plainview, Texas 79072

LO-88-87

Dear Mr. McEachern:

You ask whether salary increases purportedly given elected county officials in the budget adopted by the commissioners court for the year beginning January 1, 1988, are valid.

You have furnished this office with a copy of the budget that indicates that a five per cent raise be given to all elected officials (designating each office separately and reflecting the 1987 and 1988 salaries), effective January 1, 1988. The budget was filed in the office of the county clerk on September 28, 1987; it was adopted on that date. The minutes of the commissioners court you have furnished us show that notice was given of the "hearing on county budget." The notice provided as follows:

NOTICE IS HEREBY GIVEN by Order of the County of Hale COMMISSIONERS' COURT that a Public Hearing on the County Budget of Hale County, Texas, will be held on the 28th day of September, 1987, at 10:00 A.M., at the Courthouse, First Floor, Plainview, Texas 79072.

ALL TAX PAYERS are invited to be present and participate in the hearing.

Given under my hand and seal of the Commissioners' Court of the County of Hale, Texas.

The notice bears the signature of the county judge, followed by the notation, "publish September 24, 25, and 27, 1987." You ask about the effect of the adoption on December 14, 1987 by the commissioners court of a resolution indicating that no elected official should receive a raise.

Section 152.013 of the Local Government Code (formerly article 3912k, V.T.C.S.) provides the procedure for setting salaries for elected officials. Section 152.013 states

(a) Each year the commissioners court shall set the salary, expenses, and other allowances of elected county or precinct officers. The commissioners court shall set the items at a regular meeting of the court during the regular budget hearing and adoption proceedings.

(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.

(c) Before filing the annual budget with the county clerk, the commissioners court shall give written notice to each elected county and precinct officer of the officer's salary and personal expenses to be included in the budget. (Emphasis added.)

The notice of the hearing on the county budget to be held on September 28, 1987, does not reflect proposed increases of salaries for elected county officials nor does it appear that it was published "before the 10th day before the date of the meeting."

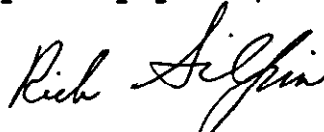
In Attorney General Opinion MW-516 (1982), this office concluded that the then article 3912k (now section 152.013) notice requirements must be followed if pay raises for elective officials are to be valid. In Attorney General Opinion MW-516 it was stated:

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A special notice is required by article 3912k if salaries are to be raised. While the commissioners court might have properly set salaries of county and precinct officers at a regular budget hearing without having given an article 3912k notice, it could do so only if no such salaries were raised beyond their levels for the preceeding year. (Emphasis added.)

Since the notice requirements of section 152.013 (formerly article 3912k) were not followed, the commissioners court was without authority to raise salaries of elected officials in the budget it adopted on September 28, 1987. It is therefore unnecessary to decide the effect of the commissioners court's action in voting that no elected official should receive a raise at a public hearing held on December 14, 1987.¹

Very truly yours,



Rick Gilpin, Chairman
Opinion Committee

APPROVED: Opinion Committee

RG/TGD/bc

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1. In Attorney General Opinions JM-326 (1985) and JM-839 (1988), it was stated that a commissioners court may consider the salary for an elected official only during the regular annual budget and adoption proceedings. In those opinions it was concluded that a commissioners court is without authority to reduce the salary of an elected county official set at the annual budget hearings. Unlike the instant case, there was no question about the validity of the commissioners court's action in setting salaries of the elected officials at the annual budget hearing in Attorney General Opinions JM-326 and JM-839.