



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 26, 1992

Mr. Frank Madden
County Auditor
Cherokee County Courthouse
Rusk, Texas 75785

Letter Opinion No. 92-44

Re: Responsibility of the commissioners court with respect to district court order decreeing pay increases for district court personnel (RQ-13)

Dear Mr. Madden:

You inquire about the duty of the Cherokee County Commissioners Court to order payment in accordance with a district court order establishing salaries for certain district court personnel. You have given us the following information about the situation prompting your request: the district judges held a hearing and issued an order establishing pay raises for the county auditor, assistant county auditors, court reporters, court coordinator, and secretary to the district judges. The county commissioners court accordingly budgeted raises for the auditor, assistant auditors and court reporters, but did not budget raises for the court coordinator or secretary to the district judges. There appears to be no dispute over the raises ordered for the first three positions, which the commissioners court was statutorily required to place in its budget. See Local Gov't Code §§ 152.031(a) (county auditors), 84.021(a) (county auditor's assistants); and Gov't Code § 52.051 (court reporters); see also Attorney General Opinions JM-440 (1986); JM-49 (1983); *Mays v. Fifth Court of Appeals*, 755 S.W.2d 78 (Tex. 1988). We will therefore focus on the respective roles of the district court and the commissioners court in the budgeting of salaries for the court coordinator and secretary to the district judges.

We find that under the Texas Government and Local Government Codes, the county commissioners court may exercise its discretion in budgeting salaries for both the court coordinator and the secretary to the district judges. The appointment of court coordinators is governed by subchapter E of chapter 74 of the Government Code. Pursuant to these provisions, designated judges may establish a court coordinator system for their courts and appoint a court coordinator. Gov't Code §§ 74.101(a), 74.102(a). The court coordinator serves at the pleasure of the judge who appointed him. *Id.* § 74.101(b). However, the judges do not have the power to

mandate the amount of the court coordinator's salary. The salaries of court coordinators are established in accordance with the following procedures:

(a) The judges shall determine reasonable compensation for the court coordinators, *subject to approval of the commissioners court.*

(b) Upon approval by the commissioners court of the position and compensation, the commissioners court of the county shall provide the necessary funding through the county's budget process. County funds may be supplemented in whole or part through public or private grants.

Id. § 74.104 (emphasis added).

While this provision has not been interpreted by a court of record, the phrase "subject to approval of the commissioners court" relative to the establishment of salaries of assistant criminal district attorneys has been. In *Commissioners Court of Caldwell County v. Criminal Dist. Attorney*, 690 S.W.2d 932 (Tex. App.—Austin 1985, writ ref'd n.r.e.), the court harmonized two statutes, one authorizing the prosecuting attorney to "fix" the salaries of his assistants "subject to the approval of the commissioners court" and the other authorizing the commissioners court, following a public hearing, to finally approve and adopt a county budget incorporating any changes to the county judge's proposed budget that the commissioners court deemed legally necessary or proper. The court of appeals determined that the first statute authorized the prosecuting attorney to specify salaries and include them as part of the county judge's proposed budget under the second statute. The phrase "subject to the approval of the commissioners court" in the first statute could then be read in harmony with the court's explicit authority under the second statute to finally approve and adopt the county's annual budget. The commissioners court therefore could change the salaries specified by the prosecuting attorney during its regular budget process. *But see Commissioners Court of Hays County v. District Judge*, 506 S.W.2d 630 (Tex. Civ. App.—Austin 1974, writ ref'd n.r.e.) (statute providing that district court judge fix salaries of probation officers with advice and consent of commissioners court did not give commissioners veto power over judge's decision); Attorney General Opinion JM-144 (1984).

We think a similar answer is required here. Because the commissioners court is vested with final authority to approve both the position and compensation of court coordinators, we believe the legislature has clearly indicated its intent that the salaries of these personnel be subject to the regular county budgetary process. An

examination of the statutory structure providing for public input into the budgetary process supports our determination. Under Local Government Code section 152.905, district judges must hold public hearings before setting the annual salaries of county auditors, assistant auditors, and court reporters, *i.e.*, salaries over which the district judges have control. This provision allows the public to participate in funding decisions made outside of the normal county budgetary process. No such provision exists or is necessary in the case of positions within the discretion of the commissioners court, as funding for those positions is open to public scrutiny and comment through statutory provision of public hearings on county budgets. See Local Gov't Code §§ 111.007, 111.038, 111.067; 35 D. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 15.7 (Texas Practice 1989). The fact that the court coordinator's salary is not subject to section 152.905 reinforces our belief that such salary is within the final determination of the commissioners court rather than the district judge. See *Commissioners Court of Caldwell County*, 690 S.W.2d 932.

We find no statute expressly addressing the employment of judges' secretaries or the setting of their salaries. Section 151.901 of the Local Government Code, however, authorizes the county commissioners court to "enter an order to employ and provide compensation for secretarial personnel for a district, county, or precinct officer if the court determines that the financial condition of the county and the staff needs of the officer justify doing so." Section 152.011 provides that

The commissioners court of a county shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds.

Under these provisions, a judge would have to approach the commissioners court and request the establishment of the position and a salary, the final decision to be made by the commissioners court. Therefore, the commissioners court is not statutorily required to increase the salary of the secretary to the judge and court coordinator in the amount specified in the district court's order. See Attorney General Opinion JM-49.¹

¹We note that the order of the district court, submitted with your request, identifies the position as "Secretary to the District Judge and Coordinator." That designation could conceivably place the position within the purview of section 74.103 of the Government Code, which allows district courts to "appoint appropriate staff and support personnel according to the needs in each county." Enacted as a part of the Court Administration Act adopted in 1985, that provision was specifically adopted as a part of the subchapter governing court coordinators. Acts 1985, 69th Leg., ch. 732. Section 74.104 of the Government Code governs salaries for court coordinators, but that provision is limited by its terms to coordinators and does not address salaries for the staff and support personnel appointed under section 74.103. Inasmuch as chapter 74 of the Government Code does not include a salary provision

It has been suggested that the court may nevertheless have the inherent power to compel the payment of the mandated salary increases. It is true that Texas law has recognized inherent powers of the judiciary to act in self-preservation, including the power to compel the legislative and executive branches to provide essential staffing and facilities for it to properly perform its judicial functions. *District Judges of the 188th Judicial Dist. v. County Judge and Commissioners' Court for Gregg County*, 657 S.W.2d 908. (Tex. App.--Texarkana 1983, writ ref'd n.r.e.), and cases cited therein. The decision in *188th Judicial District* contains a helpful discussion of the basis for the inherent powers doctrine:

Our Constitution distributes the powers of government among three separate and independent branches, thereby creating a system of checks and balances which has served us well as a guard against usurpation and tyranny. For this separation of powers principle to operate effectively as intended, there must be a reasonable and proper exercise of power by each branch and a harmonious cooperation among the three. . . .When . . . the necessary spirit of cooperation fails the judiciary must resort to its inherent power to insure that it will have the means to discharge its responsibilities.

657 S.W.2d at 909.

However, the court in *188th Judicial District* also cautioned that this inherent power was "not unlimited, especially in the area of government finances":

The raising of revenue and the allocation of financial resources among all government entities is initially and primarily the responsibility of the legislative branch of government, and sound public policy considerations demand that when the judiciary seeks to use its inherent power to overcome this peculiar prerogative of the Legislature, it be held to a high standard and assume the burden of showing that the funds sought to be compelled are essential for the holding of court, the

(footnote continued)

for staff and support personnel appointed by the courts under section 74.103, we think that such salaries are governed by section 151.901 of the Local Government Code. Thus, even if the section 74.104 provision for the establishment of court coordinators' salaries were held to include the salaries of staff and support personnel appointed under 74.103, the procedure for hiring personnel and establishing salaries would be the same as that for secretaries under section 151.901 of the Local Government Code.

efficient administration of justice, or the performance of its constitutional and statutory duties.

Id. at 909-910; see also *In the Matter of El Paso County Courthouse*, 765 S.W.2d 876 (Tex. App--El Paso 1989, no writ). The court then ruled that the district judges had failed to establish that the salary increases that they had ordered for court personnel were essential to any of the cited court functions.

188th Judicial District raises two critical points about funding disputes and the inherent powers doctrine. The first is that the inherent powers doctrine has not been used in Texas to compel funding of specific salary amounts. The inherent power of the judiciary to compel funding extends only to ensuring adequate funding for the judiciary to function. See also *Vondy v. Commissioner's Court of Uvalde County*, 620 S.W.2d 104 (Tex. 1981) (legislative branch has the duty to provide the judiciary with funds necessary for it to function adequately, and therefore commissioners court had duty to reasonably compensate duly elected constable; but commissioners court determines what reasonable salary would be); *In the Matter of El Paso County Courthouse* (inherent powers properly invoked to ensure adequate facility for judges, but not to mandate specific procedures and expenditures for doing so.). The second is that a determination of the necessity of the funding sought to the discharge of the court's responsibilities can only be decided through litigation of the issue. "While administrative findings of the courts concerning their own needs must be given proper weight and deference, there are important reasons why they should not be accepted as valid until they have been established by the fact finding process." *188th Judicial District* at 910. Rather, an invocation of inherent powers to override the legislative body's funding prerogative "should be . . . [made] only on the basis of a detached and objective finding of essentiality." *Id.* Whether the judges in the present case could establish that the particular salary increases they seek are necessary for the court to function adequately is a fact determination which the opinion process cannot resolve.²

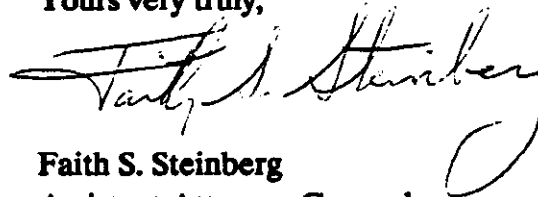
²We are aware that five justices joined in a concurring opinion to *Mays* asserting that the inherent powers of the judiciary would allow the court to compel the expenditure of public funds "reasonably necessary for the court to efficiently fulfill its constitutional function." *Mays* at 80 (emphasis added). The concurring justices agreed that the inherent power would allow a district judge to set and compel the funding of a reasonable salary for a court reporter, even if the judges had not been granted this power by statute. This concurrence cannot control our decision, however, as it was dicta. See *In the Matter of El Paso County Courthouse*, 765 S.W.2d 876, 880 (Tex. App--El Paso 1989, no writ). Furthermore, it leaves open the fact question of whether a particular salary increase is reasonably necessary for the administration of justice, a question that this committee cannot answer.

In conclusion, we find that the Commissioners Court of Cherokee County was statutorily required to fund the positions of county auditor, assistant county auditors, and court reporters as ordered by the district court. However, under Government Code and Local Government Code provisions, the commissioners court does not have a duty to budget the salary increases ordered by a district judge for the positions of district court coordinator and secretary to the judge and court coordinator.

S U M M A R Y

District judges, acting without commissioners court approval, establish the salaries of the county auditor, the auditor's assistants, and court reporters. The commissioners court must approve salaries for court coordinators and secretaries, and therefore has no duty to order the salary increases for those positions in accordance with a district court administrative order.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Faith S. Steinberg". The signature is written in dark ink and is positioned above the typed name.

Faith S. Steinberg
Assistant Attorney General
Opinion Committee