



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 18, 1996

The Honorable John D. Kimbrough  
Orange County Attorney  
Orange County Courthouse  
Orange, Texas 77630

Letter Opinion No. 96-003

Re: Whether the Orange County Commissioners Court must order payment in accordance with a district court order adjusting salaries of court administration personnel within the amount approved and budgeted (ID# 33340)

Dear Mr. Kimbrough:

You inform us that on February 27, 1995, the local administrative district judge and the two other district judges in Orange County issued an order setting the salaries of court administration personnel. You state that the order shifted some duties and responsibilities from the court administrator to the court coordinators and adjusted the salaries for these positions. The salary adjustments would not require the county to allocate additional funds to the courts but in fact would result in a saving from the amount already approved by the commissioners court during the regular budget process. You request advice regarding the duty of the Orange County Commissioners Court to order payment in accordance with the district court order.

On March 6, the judges signed an order setting aside their order of February 27, 1995. Thus, we understand that there is no court order in existence concerning the salaries of the court administration personnel and that the commissioners court should no longer be concerned about its duties with respect to such order. We will, however, advise you how the courts have dealt with questions similar to those raised by your request.

Section 74.091 of the Government Code provides for a local administrative district judge in each county. The local administrative judge and each district or statutory county court judge "may establish a court coordinator system and appoint a court coordinator." Gov't Code § 74.101. The courts may also "appoint appropriate staff and support personnel according to the needs in each county." *Id.* § 74.103. Section 74.104, relating to compensation, provides as follows:

- (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. [Emphasis added.]

The italicized language of section 74.104(a) was construed in Letter Opinion No. 92-44 (1992) to mean that the judges shall recommend salaries for the court coordinators, subject to the authority of the commissioners court to change the recommended amounts during the regular budget adoption process. See *Commissioners Court v. Criminal Dist. Attorney*, 690 S.W.2d 932 (Tex. App.--Austin 1985, writ ref'd n.r.e.). In the usual case, the county judge prepares a proposed budget, which is subject to change by the commissioners court. Local Gov't Code §§ 111.003 - .008. Section 74.104(a) authorizes the district judges, rather than the county judge, to specify the salaries for the court coordinators to be included in the proposed budget. See *Commissioners Court v. Criminal Dist. Attorney*, 690 S.W.2d at 938. Thus, subsection 74.104(a) authorizes the judges to recommend salaries for the court coordinators, and their recommendations are subject to change during the county budgeting process. We also believe that the courts' power to appoint staff and support personnel "according to the needs in each county," Gov't Code § 74.103, is subject to the commissioners court's approval of the position and compensation pursuant to section 151.901 of the Local Government Code. Letter Opinion No. 92-44 (1992) at 3.

After the commissioners court approves the county budget that includes salaries for the court administrator, the court administrator's secretary, and the court coordinators, it is subject to Local Government Code section 111.010, which provides in part:

(b) After final approval of the budget, the commissioners court may spend county funds only in strict compliance with the budget, except in an emergency.

(c) The commissioners court may authorize an emergency expenditure as an amendment to the original budget only in a case of grave public necessity . . . .

(d) The commissioners court by order may amend the budget to transfer an amount budgeted for one item to another budgeted item without authorizing an emergency expenditure.

You have informed us that the salary adjustments sought by the court would not require the county to allocate additional funds. Before subsection 111.010(d) was adopted in 1989,<sup>1</sup> the commissioners court could transfer funds from one item to another only by finding that an emergency existed. Attorney General Opinion DM-158 (1992); see

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<sup>1</sup>Act of May 9, 1989, 71st Leg., R.S., ch. 167, 1989 Tex. Gen. Laws 549.

Attorney General Opinion JM-784 (1987). Subsection 111.010(d) authorizes the commissioners court to make salary adjustments by transfer, but we find no statute authorizing the district courts to transfer funds from one budget item to another.

You suggest that subsections (8) and (9) of Government Code section 74.092 authorize the local administrative judge to make salary adjustments within the amount already budgeted by the commissioners court. Section 74.092 provides in part:

The local administrative judge shall:

.....

(8) supervise the employment and performance of nonjudicial personnel;

(9) supervise the budget and fiscal matters of the local courts, subject to local rules of administration . . . .

The local rules of administration, to be adopted by the district and statutory county court judges in each county, must provide for various matters of court administration, such as assignment of cases, division of caseloads, and plans for judicial vacation, sick leave, and attendance at educational programs. Gov't Code § 74.093. The rules may also provide for "any other matter necessary to carry out . . . [Government Code chapter 74] or to improve the administration and management of the court system and its auxiliary services."

Subsections (8) and (9) of section 74.092 of the Government Code do not expressly authorize the local administrative judge to transfer funds from one budget item to another, as a comparison of their language with that of section 111.010(d) will show. Moreover, we see no basis for concluding that subsections (8) and (9) impliedly authorize the administrative judge to make salary adjustments within the sum budgeted by the commissioners court. The supervisory responsibility conferred upon the administrative judge by these provisions could certainly be exercised in strict compliance with the county budget. Thus, we find no statutory authority for the district judges in Orange County to adjust the salaries of court personnel.

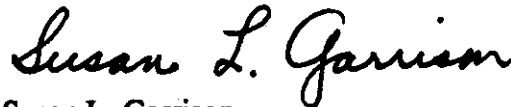
You have not inquired whether the district courts may achieve the salary adjustment as an exercise of their inherent powers. Since this doctrine has been raised in disputes between the commissioners court and the local trial courts in connection with adequate funding of the trial courts, we will briefly address it. Letter Opinion No. 92-44 (1992) discussed the possibility that a district court may have inherent power to compel payment of salary increases it mandated for court personnel. We noted 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." Letter Opinion No. 92-44

(1992) at 4; see *District Judges v. County Judge*, 657 S.W.2d 908 (Tex. App.--Texarkana 1983, writ ref'd n.r.e.). However, this inherent power is "not unlimited, especially in the area of government finances." *District Judges*, 657 S.W.2d at 909-910. Letter Opinion No. 92-44 further stated that "the inherent powers doctrine has not been used in Texas to compel funding of specific salary amounts"<sup>2</sup> but "extends only to ensuring adequate funding for the judiciary to function." Letter Opinion No. 92-44 (1992) at 5. "[A] determination of the necessity of the funding sought to the discharge of the court's responsibilities can only be decided through litigation." *Id.* Whether judges in a particular case could establish that certain salary adjustments are necessary for the court to function adequately is a fact question that cannot be resolved in the opinion process. *Id.*

### S U M M A R Y

The district judges in Orange County have no statutory authority to change the salaries of the court administration personnel set in the budget adopted by the Orange County Commissioners Court by transferring funds from one budget item to another.

Yours very truly,



Susan L. Garrison  
Assistant Attorney General  
Opinion Committee

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<sup>2</sup>See *Randall County Comm'rs Court v. Sherrod*, 854 S.W.2d 914 (Tex. App.--Amarillo 1993, no writ) (Dodson, J., concurring and dissenting) (no appellate cases after *Vondy v. Commissioners Court*, 620 S.W.2d 104 (Tex. 1981), requiring commissioners court to set reasonable salary for personnel paid from county funds).