



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 11, 1996

The Honorable Ben W. "Bud" Childers
Fort Bend County Attorney
309 South Fourth Street, Suite 621
Richmond, Texas 77469

Letter Opinion No. LO96-028

Re: Whether a commissioners court may provide for its members gasoline and repairs to their personal vehicles in addition to a monthly travel allowance (ID# 36631)

Dear Mr. Childers:

You inquire whether the members of the Fort Bend County Commissioners Court may provide for themselves gasoline and repairs to their personal vehicles in addition to a monthly travel allowance. You included with your request letter a letter from the Fort Bend County Auditor, which states as follows:

In setting the salary, expenses, and other allowances of elected county officers, according to section 152.013, Local Government Code, the commissioners court set for themselves \$500.00 monthly travel allowance, plus county gasoline and repairs to their personal automobile at a county vehicle maintenance facility. Repairs include such items as tires, batteries, shock absorbers, and oil changes.

Section 152.011 of the Local Government Code places on the commissioners court of a county the duty to "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." The commissioners court must set the salary, expenses, and other allowances of elected county and precinct officers at a regular meeting of the court during the regular budget hearing and adoption proceedings. Local Gov't Code § 152.013(a).

Section 152.011 expressly lists "travel expenses" as a type of compensation the commissioners court may provide county officers, including the commissioners. This office previously has stated that a commissioners court may fix the amount of a travel expense allowance a county officer will receive, but the commissioners court must adhere to two rules. Attorney General Opinion JM-879 (1988) at 2. First, the amount of the allowance must be "*reasonably related to official county business.*"¹ *Id.* at 2-3. Second,

¹This office previously has determined that, in normal circumstances, travel between home and office is not reimbursable, official county business. See Attorney General Opinion H-992 (1977) at 3. On the other hand, this office has concluded that "[t]ravel for the purpose of inspecting roads and overseeing

the amount of the allowance must be "*reasonable in relation to expenses actually incurred or to be incurred.*" *Id.* at 3. When a county officer, including a county commissioner, receives a fixed travel expense allowance, the county auditor may not premise payment of the allowance on receipt of records documenting the county officer's use of the travel allowance. *Id.* at 2. *See generally* Attorney General Opinion H-992 (1977) at 2 (discussing statutory predecessor to Local Gov't Code § 152.011).

This office also previously has concluded that a county may provide a county official with gasoline and automotive supplies for the official's personal vehicle used in county business. Attorney General Opinion JM-148 (1984) at 2. A county officer may receive only the amount of gasoline or pro rata portion of automotive supplies that the officer actually uses in county business, however. *Id.* Furthermore, the county auditor may require the county officer to document the use of the gasoline and automotive supplies and provide an affidavit attesting that the gasoline and a certain portion of the automotive supplies recompense the county officer for the use of his or her personal automobile in the performance of official county business. *Id.*

Attorney General Opinion JM-148 discussed the provision of in-kind reimbursement as an *alternative* to a monetary reimbursement or allowance. *See id.*; *cf.* Attorney General Opinion MW-121 (1979) at 1 (considering whether county hospital authority may authorize hospital's superintendent to use hospital credit cards "rather than" reimburse superintendent on mileage basis). We have found no precedent, either judicial or from this office, considering whether a county commissioners court may provide itself both in-kind reimbursement and a lump sum allowance for travel expenses. Nevertheless, we believe our previous opinions provide guidance.

In our opinion, the total amount of in-kind reimbursement and travel expense allowance a county commissioner receives must be reasonably related to official county business. The amount of in-kind reimbursement may not exceed the amount of gasoline or other fuel used for county business and the amount of wear and tear the commissioner's personal vehicle has suffered in the performance of county business. The county auditor may require the commissioner to document the commissioner's use of gasoline on official county business and the amount of wear and tear on the vehicle attributable to travel for

(footnote continued)

the maintenance" of county roads is reimbursable "to the extent that such activity is reasonably related to official county business." *See* Attorney General Opinion JM-879 (1988) at 3.

With respect to travel by members of the commissioners court to "public functions such as dedications, civic ceremonies[,] and county fairs," this office has stated that such travel is official county business and reimbursable if "attendance is in the interest of the county." *Id.* If attendance at the public function is solely for the personal purposes of the individual official, travel to the public function is not official county business and may not be reimbursed. *Id.*

official county business. The commissioners should be aware that proving the amount of wear and tear on the vehicle that is attributable to county business will be difficult, at best.

Furthermore, the amount of the monetary travel expense allowance must be reasonable in relation to expenses actually incurred or to be incurred. The commissioners court must take into account, when setting the amount of the travel expense allowance, that travel expense allowance may not be used to duplicate gasoline expenses and automotive repairs that the commissioners receive through in-kind reimbursement. The county auditor may not require documentation before releasing the travel allowance to a county commissioner.

We question whether a monthly travel allowance of \$500 is necessary, assuming the commissioners receive in-kind reimbursement from the county for travel on official county business. We cannot determine the answer to that question, however, because the answer involves the resolution of factual issues. The resolution of fact questions is inappropriate to the opinion process. *E.g.*, Attorney General Opinions DM-98 (1992) at 3, H-56 (1973) at 3, M-187 (1968) at 3, O-2911 (1940) at 2.

Article III, section 52(a) of the Texas Constitution, which you raised in a letter to this office, is not contrary to this opinion. Article III, section 52(a) forbids the legislature to authorize a county "to grant public money or thing of value . . . to any individual." This office has interpreted article III, section 52(a) to prohibit any grant of public money for private purposes only; article III, section 52(a) does not prohibit a grant of public money for public purposes if the political subdivision granting the money places sufficient controls on the transaction to ensure that the public purpose is carried out. *See* Attorney General Opinions JM-1229 (1990) at 3-6 (and sources cited therein), H-357 (1974) at 5, M-1023 (1971) at 2-7; *see also* *Barrington v. Cokinos*, 338 S.W.2d 133, 140 (Tex. 1960); 1 GEORGE D. BRADEN, THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 233 (1977); 2 BRADEN, *supra*, at 676-77.

Article III, section 52 requires the county commissioners court to find, however, that the grants of public funds--here, a travel allowance, as well as in-kind reimbursement--serve a public purpose.² *See* Attorney General Opinion JM-1229 (1990) at 6. If the county commissioners are receiving twice as much reimbursement as the

²No fixed rule delineates exactly what constitutes a "public purpose." *See* *Davis v. City of Taylor*, 67 S.W.2d 1033, 1034 (Tex. 1934) (quoting 6 MCQUILLEN ON MUNICIPAL CORPORATIONS § 2532, at 292 (2d ed. 1940)) (stating that "[w]hat is a public purpose cannot be answered by any precise definition further than to state that if an object is beneficial to the inhabitants and directly connected with the local government it will be considered a public purpose"). Rather, the governing board of the relevant political subdivision must determine in the first instance whether a particular grant of public money serves a legitimate public purpose, and whether the political subdivision has placed sufficient controls on the transaction to ensure that the public purpose will be carried out. The governing board's determination is subject to judicial review. Attorney General Opinion DM-317 (1995) at 3.

amount they incur in travel expenses because they receive an allowance to cover the costs of fuel and vehicular wear and tear, plus they replenish their fuel tank with county gasoline and have their vehicles repaired at a county vehicle maintenance facility, we question whether the use of public funds serves a public purpose.

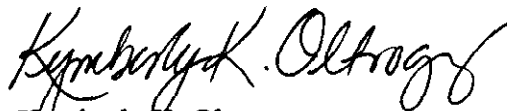
Godley v. Duval County, 361 S.W.2d 629, 630 (Tex. Civ. App.--San Antonio 1962, no writ), which you cited in your brief, also is not inconsistent with this opinion. *Godley* speaks only to the use of county labor, materials, and equipment for private purposes. *See id.* at 630.

S U M M A R Y

The total amount of in-kind reimbursement and travel expense allowance a county commissioner receives must be reasonably related to official county business. The amount of in-kind reimbursement may not exceed the amount of gasoline or other fuel used for county business and the amount of wear and tear the commissioner's personal vehicle has suffered. The county auditor may require the commissioner to document the commissioner's use of gasoline on official county business and the amount of wear and tear on the vehicle attributable to travel for official county business.

Furthermore, the amount of the monetary travel expense allowance must be reasonable in relation to expenses actually incurred or to be incurred. The commissioners court must take into account, when setting the amount of the travel expense allowance, that travel expense allowance may not be used to duplicate gasoline expenses and automotive repairs that the commissioners receive through in-kind reimbursement. The county auditor may not require documentation before releasing the travel allowance to a county commissioner.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee