



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 20, 1997

The Honorable José R. Rodríguez
El Paso County Attorney
500 East San Antonio, Room 203
El Paso, Texas 79901

Letter Opinion No. 97-075

Re: Compensation to be paid to El Paso County
Judge pursuant to Local Government Code section
152.904(b) (ID# 39469)

Dear Mr. Rodríguez:

You request advice on the compensation to be paid the county judge of El Paso County. The commissioners court sets the salary of the county judge,¹ subject to section 152.904(b) of the Local Government Code, which provides as follows: "The county judge of El Paso County is entitled to receive an annual salary in an amount not to exceed 90 percent of the total annual salary, including supplements, paid to any district judge in the county."² You wish to know whether section 152.904(b) sets the salary for the El Paso County Judge at ninety percent of the total salary, including supplements, of the district judges, or merely limits the discretion of the commissioners court in setting the salary by providing a maximum that may not be exceeded.

You believe that section 152.904(b) establishes a maximum amount for the county judge's salary at not more than ninety percent of a state district judge's salary, including supplements, and does not require the commissioners court to pay the full amount. However, you are concerned that the word "entitled" in this provision might be read to mean that the commissioners court must pay the county judge exactly ninety percent of a district judge's salary, including supplements.

The predecessor of section 152.904(b) shows that the use of the word "entitled" is not particularly significant. Prior to its recodification as subsection 152.904(b) of the Local Government

¹See Local Gov't Code § 152.011; Attorney General Opinion MW-110 (1979).

²See Gov't Code §§ 32.071 (annual salary payable by commissioners court to district judges), 659.012 (annual salary paid by state to district judge); *see also* Attorney General Opinion JM-1140 (1990).

Code in the nonsubstantive revision of statutes relating to local government,³ this provision read as follows:

The judges of the county courts at law now in existence or which shall hereafter be created in El Paso County and the judge of the county court *shall receive an annual salary* in an amount not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in El Paso County. . . . The judge of the county court . . . shall not collect any fee *from the county for disposing of any criminal case.*⁴

The predecessor provision mandated that the judge receive an annual salary, perhaps in contrast to the fees mentioned in the final sentence, “in an amount not to exceed nine-tenths of the total annual salary, including supplements, paid any district judge sitting in El Paso County.” The substitution of the phrase, “is entitled to receive an annual salary,” for “shall receive an annual salary” did not change the meaning of the predecessor provision.⁵

A prior opinion of this office defined the phrase “not to exceed” as meaning that “a lesser amount may suffice,” but a greater amount than the stated amount is not permissible.⁶ We conclude that the county judge’s “entitlement” is to be paid a salary for his work, to be set by the commissioners court within the maximum allowed by section 152.904(b), and is not an entitlement to receive that maximum amount.

³Act of May 1, 1987, 70th Leg., R.S., ch.149, § 1, 1987 Tex. Gen. Laws 707, 931; see Act of April 30, 1987, 70th Leg., R.S., ch. 148, § 4.02(a), 1987 Tex. Gen. Laws 534, 703 (repealing V.T.C.S. art. 1970-141.2).

⁴Act of May 22, 1975, 64th Leg., R.S., ch. 531, § 1, 1975 Tex. Gen. Laws 1383, 1383 (codified as V.T.C.S. art. 1970-141.2, § 5(b)) (emphasis added) (footnote added).

⁵Act of May 1, 1987, 70th Leg., R.S., ch.149, § 51, 1987 Tex. Gen. Laws 707, 1308 (act intended as recodification only, and no substantive change in law intended).

⁶Attorney General Opinion MW-302 (1981); see also Attorney General Opinion JM-938 (1988).

S U M M A R Y

Section 152.904(b) of the Local Government Code, which provides that the "county judge of El Paso County is entitled to receive an annual salary in an amount not to exceed 90 percent of the total annual salary, including supplements, paid to any district judge in the county," establishes a maximum for the county judge's annual salary. The commissioners court may set the county judge's salary at less than the maximum stated in this provision.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Opinion Committee