



Office of the Attorney General
State of Texas

March 29, 1994

DAN MORALES

ATTORNEY GENERAL

Honorable Nathan B. Rheinlander
Office of County Attorney
Comal County
150 North Seguin, Suite 318
New Braunfels, Texas 78130-5113

Letter Opinion No. 94-034

Re: Whether a salary grievance committee established under chapter 152 of the Local Government Code is authorized to hear a justice of the peace's grievance concerning an "auto allowance" (ID# 22241)

Dear Mr. Rheinlander:

You have requested an opinion regarding whether a salary grievance committee established under subchapter B of chapter 152 of the Local Government Code is authorized to hear a justice of the peace's grievance concerning an "auto allowance."¹

Section 152.013 of the Local Government Code provides that each year "the commissioners court shall set the *salary, expenses, and other allowances* of elected county or precinct officers" at a regular meeting of the court.² Local Gov't Code § 152.013(a) (emphasis added). Before filing the annual budget with the county clerk, the commissioners court is required to give "written notice to each elected county and precinct officer of the officer's *salary and personal expenses* to be included in the budget." *Id.* § 152.013(c) (emphasis added). Section 152.016 of the Local Government Code provides that an elected county or precinct officer who is "aggrieved by the setting of the officer's *salary or personal expenses* may request a hearing before the salary grievance committee." *Id.* § 152.016(a) (emphasis added). Subsection (d) of that provision states that the committee's authority "is limited to the consideration of increases in the *salaries or personal expenses* of county and precinct officers. The committee may not set policy of the county or add new items to a proposed county budget." *Id.* § 152.016(d) (emphasis added).

Section 152.013 authorizes the commissioners court of a county to set the salary, expenses, and other allowances of elected county or precinct officers. Section 152.016, however, limits the authority of a salary grievance committee to consideration of increases in salaries or personal expenses, and does not give the grievance committee jurisdiction

¹Subchapter B does not apply to a judge of a court of record. Local Gov't Code § 152.017(1). A justice of the peace is not a judge of a court of record. *Ex parte Hayden*, 215 S.W.2d 620 (Tex. Crim. App. 1948).

²Section 152.011 of the Local Government Code provides that "[t]he 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."

over allowances. This omission is not inadvertent. Prior to 1983, the statutory predecessor to section 152.016 authorized an elected county or precinct officer to grieve his or her "salary, expenses and other allowance." V.T.C.S. art. 3912k, § 2(d) (repealed by Acts 1987, 70th Leg., ch. 149, § 49, at 1307). In 1983, the legislature amended the statute to delete the term "allowance" and added a new subsection which provided that "[t]he authority given to the salary grievance committee is specifically limited to increasing items concerning salaries or personal expenses of county and precinct officers. Nothing in this Act shall be interpreted to allow the committee to set policy of the county or add new items to a proposed county budget." See Acts 1983, 68th Leg., ch. 336, § 1, at 1743.

Therefore, we must consider whether the "auto allowance" at issue here constitutes a "personal expense" or "an allowance." This office explained the difference between an expense and an allowance in Attorney General Opinion H-992:

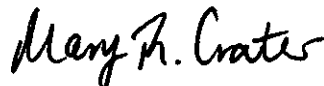
we believe that the use of the term "expense" in article 3912k [the statutory predecessor to chapter 152 of the Local Government Code] requires that the sum set by the commissioners as "travel expense" reflect the expenses actually incurred by county officials in the conduct of official business. While county officials may receive a monthly travel allowance without the need to account for every mile traveled when their duties require traveling from their official stations on a continuing basis, the sum set as a travel allowance must be premised upon some basis of fact and reasonable calculation. See Letter Advisory No. 89 (1975).

Attorney General Opinion H-992 (1977) at 2. Based on the information you have provided, it appears that the justice of the peace is not paid the "auto allowance" on the basis of his actual mileage or actual expenses, but rather in a fixed amount on a monthly basis. For this reason, it appears that the "auto allowance" is an allowance rather than an expense, and that the salary grievance committee is therefore not authorized to consider the justice of the peace's grievance with respect to this matter.

S U M M A R Y

A salary grievance committee established under chapter 152 of the Local Government Code not is authorized to hear a justice of the peace's grievance concerning an "auto allowance" which is not based on actual expenses.

Yours very truly,



Mary R. Crouter
Assistant Attorney General
Opinion Committee