

# 2021

## SHORT ANSWERS TO COMMON QUESTIONS

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## SALARY GRIEVANCE COMMITTEE

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The  symbol indicates sections that have been updated since the previous publication.

### INTRODUCTION

Chapter 152 of the Local Government Code creates a salary grievance process for elected county and precinct officials to challenge their salaries, expenses, and allowances as set out in the proposed budget. Under Section 152.013 of the Local Government Code, notice must be published in a newspaper of general circulation in the county at least 10 days prior to any meeting at which proposed increases in salaries, expenses or allowances will be discussed. Written notice must also be provided to each elected county and precinct officer detailing the salary and personal expenses to be included in the budget. An elected county or precinct officer who disagrees with the salary or personal expenses provided in the proposed budget may request a hearing before the salary grievance committee before the budget's final approval.<sup>1</sup>

The nine-member salary grievance committee generally consists of the county judge, sheriff, tax assessor-collector, treasurer, county clerk, district clerk, county attorney or criminal district attorney, and the number of members of the public necessary to provide nine voting members. The county judge is chair of the committee but is not entitled to vote. As an alternative, the commissioners court may vote to have the committee consist of nine public members, which is also chaired by the county judge.<sup>2</sup>

The public members of the committee are selected at a meeting of the commissioners court at any time but no later than the 15<sup>th</sup> day after a hearing request has been made. The

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<sup>1</sup> Tex. Local Gov't Code §152.016

<sup>2</sup> Tex. Local Gov't Code §152.014



public members may be selected by one of two distinct processes, as directed by the commissioners court.<sup>3</sup>

Under one process, the county clerk places the names of each person who served on a grand jury during the preceding calendar year on separate slips of paper. At the meeting, the slips are placed in a container, and the county judge draws the appropriate number of names to select the public members of the salary grievance committee. The county judge may repeat the process and draw for a list of alternates.<sup>4</sup>



Alternatively, the commissioners court may direct the county clerk to use a computer to generate a randomized list of names of all persons who served on a grand jury during the preceding calendar year. The commissioners court must adopt the randomized list; enter the list into the minutes of the meeting; and select, in the order of the list, the necessary number of public members and alternates.<sup>5</sup>



Public member vacancies are filled for the unexpired term by appointment from the list of alternates. If there is no alternates list or the list has been exhausted, replacements are selected from the remaining names not already selected, in the same manner as the vacating member.<sup>6</sup>

Public members of the committee serve until the later of the end of the fiscal year in which the person was appointed or the time the committee takes a final vote on the last grievance for which a public hearing was held.<sup>7</sup>

**1. May the salary grievance committee recommend an increase for an elected officer who did not request an increase in writing?**

No. Under §152.016 of the Local Government Code, the request for a hearing before the salary grievance committee must be from the elected officer in writing, delivered to the committee chair within five days after the officer receives notice of the salary or expenses, and state the desired salary or expenses. The committee’s authority to review the elected officer’s salary stems from the written request.<sup>8</sup>

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<sup>3</sup> Tex. Local Gov’t Code §152.015 as amended by HB 840, 87<sup>th</sup> (R) Leg., effective Sept. 1, 2021

<sup>4</sup> Tex. Local Gov’t Code §152.015(b)

<sup>5</sup> Tex. Local Gov’t Code §152.015(b-1)

<sup>6</sup> Tex. Local Gov’t Code §152.015(d)

<sup>7</sup> Tex. Local Gov’t Code §152.015(c)

<sup>8</sup> Tex. Att’y Gen. Op. No. JH-1238 (1978)

**2. What recourse does an elected official have if he or she did not receive the proper notice of a proposed change in salary and the deadline to challenge the salary change has passed?**

If the commissioners court fails to give the appropriate written notice to elected officials of a proposed reduction in salary before adopting the final budget, the officials' salaries remain fixed at the prior year's amount.<sup>9</sup> If the county attempted to enforce the adopted lower salary, the aggrieved public officials could file a mandamus action to compel the county to pay them the higher salary.

**3. Do non-elected county employees have access to the salary grievance process?**

No. The salary grievance committee process is specifically for elected county and precinct officials.<sup>10</sup>

**4. Is the salary grievance committee subject to the Open Meetings Act?**

Yes. The committee has rule-making or quasi-judicial authority and therefore is a governmental body under the Act. Action taken at a meeting that is not properly noticed is voidable.<sup>11</sup>

**5. May the salary grievance committee meet in closed session?**

No. There are no provisions for the committee to meet other than in open session. Any votes or actions taken in closed session would be voidable.<sup>12</sup>

**6. May the salary grievance committee recommend a pay increase to an elected official greater than the one requested by the official?**

Yes. Under §152.016(c), Local Government Code, if six or more of the members vote to recommend an increase in salary or personal expenses, the committee submits its recommendation to the commissioners court in writing.

If six to eight members of the committee vote to recommend an increase, the commissioners court shall **consider** the recommendation at its next meeting.

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<sup>9</sup> Tex. Att'y Gen. Op. No. GA-0620 (2008)

<sup>10</sup> Tex. Att'y Gen. Op. No. JH-1238 (1978)

<sup>11</sup> Tex. Att'y Gen. Op. No. JH-1281 (1978)

<sup>12</sup> Tex. Att'y Gen. Op. No. JM-1007 (1989)

If all nine members of the committee vote to recommend the increase and sign the recommendation, the commissioners court shall **include** the increase in the budget before the budget is filed and the increase takes effect in the next budget year.

The committee is not limited to the officer's request in making its determination.<sup>13</sup>

**7. Is the county required to publish notice of the salary increase for a county judge when the increase is a result of a state supplement?**

No. The notice is not required because the supplemental increase in the judge's salary is not an act of the commissioners court.<sup>14</sup>

**8. May a member of the salary grievance committee vote on his or her grievance?**

Yes. Members of the committee are not barred from voting on their own salary by Chapter 171, Local Government Code.<sup>15</sup>

**9. Are public members of the salary grievance committee paid for their services?**

No. Although the public members are pulled from the grand jury list, there is no provision under law for them to be paid in the same manner as grand jurors.<sup>16</sup>

**10. May an elected official appeal the decision and request a second meeting of the committee if dissatisfied with the result of the first meeting?**

No. An elected official is entitled to one appeal per budget cycle. Once finalized, the officer's next opportunity to request a salary review will be the next budgetary cycle.<sup>17</sup>

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<sup>13</sup> Tex. Att'y Gen. Op. No. MW-366 (1981)

<sup>14</sup> Tex. Att'y Gen. Op. No. GA-0426 (2006)

<sup>15</sup> Tex. Att'y Gen. LO-98-097 (1998)

<sup>16</sup> Tex. Att'y Gen. Op. No. MW-0309 (1981)

<sup>17</sup> Tex. Att'y Gen. Op. No. MW-0309 (1981)

**11. May the salary grievance committee meet after the beginning of the new fiscal year?**

No. The committee is intended to work during the regular budget process between the filing of the proposed budget with the county clerk and the adoption of the final budget by the commissioners court. The committee may not meet after the adoption of the final budget.<sup>18</sup>

**12. May the salary grievance committee set general policy for county salaries?**

No. The committee only has authority to review the salaries or personal expenses of county or precinct officers. It may not set policy or add new items to the budget.<sup>19</sup>

**13. If the county passes a final budget without providing the statutory notice of a salary change to the impacted elected officials, what is the effect on the salary?**

The individual notice is mandatory. If the commissioners court fails to provide the required notice, the officeholder's salary remains fixed at the prior year's amount. This is the case whether the final budget would have increased or decreased the officer's salary.<sup>20</sup>

**14. May the salary grievance committee meet without every member present?**

Yes. There is no requirement for each member to be present at the meeting in order for the salary grievance committee's actions to be valid. The attorney general has addressed in two opinions the absence of the county judge and a member who attempted to participate by telephone. In both instances, the absence was held not to affect the validity of the meeting.<sup>21 22</sup>

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<sup>18</sup> Tex. Att'y Gen. Op. No. DM-0405 (1996)

<sup>19</sup> Tex. Local Gov't Code §152.016(d)

<sup>20</sup> Tex. Att'y Gen. Op. No. GA-0620 (2008)

<sup>21</sup> Tex. Att'y Gen. Op. No. JM-1007 (1989)

<sup>22</sup> Tex. Att'y Gen. LO-94-031 (1994)

**15. May members of the salary grievance committee be compelled to attend its meetings?**

There is no provision in the law that suggests members of the salary grievance committee may be compelled to attend a meeting. If a county or precinct officer wishes to have the committee unanimously approve his or her salary request, the officer should encourage all members of the committee to attend the meeting.

**16. Section 152.017 of the Local Government Code provides that the salary grievance procedure does not apply to a judge of a court of record or to a presiding judge of a commissioners court in a county with a population of 3.3 million or more. Does a county judge in a county with a smaller population have recourse to the salary grievance procedure despite the fact that he or she presides over a court of record?**

Yes. In reviewing the predecessor statute to §152.017, the attorney general determined that in addition to serving as the presiding judge of the county court (which is a court of record), the county judge also serves as the presiding judge of the commissioners court. The salary grievance procedure is applicable to the county judge in the latter role.<sup>23</sup>

**17. If a commissioners court removes salary increases for county officials at the final budget hearing, do elected officials have recourse to the salary grievance process?**

In Tex. Att’y Gen. Op. No. GA-0929 (2012), the attorney general determined that removing a proposed salary increase at the final budget hearing without giving additional notice to elected officials and allowing them a chance to seek redress from the salary grievance committee renders impossible the requirements of §152.016, Local Government Code. Once the budget is final, there is no authorization for the salary grievance committee to meet. An aggrieved elected official could seek judicial review of the commissioners court’s action.

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<sup>23</sup> Tex. Att’y Gen. Op. No. MW-0110 (1979)

**18. May a county fax notice of the proposed salary to the elected officials? What if an elected official does not receive the notice?**

Yes, the salary notice may be faxed to comply with §152.013 of the Local Government Code, which requires each elected county and precinct officer to be notified of the officer's salary and personal expenses in the proposed budget. If the notice is not immediately received by the official, the five day period to submit a grievance begins on the date the notice is actually received.<sup>24</sup>

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<sup>24</sup> Tex. Att'y Gen. Op. No. JC-0471 (2002)