



THE ATTORNEY GENERAL  
OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN  
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ATTORNEY GENERAL

February 6, 1939

Hon. John F. May  
County Attorney  
Karnes County  
Karnes, Texas

Dear Sir:

Opinion No. 0-161

Re: Refunding premiums on deputy tax collector's official bond for years 1925-1938

Your letter of January 17th, addressed to Hon. Gerald C. Mann, Attorney General of Texas, has been received wherein you state that the Commissioners' Court desires an opinion as to whether or not the expenditure of refunding the premium on the official bond of the deputy tax assessor-collector of taxes by the Commissioners' Court for the years 1925-1938, inclusive, would be legal or illegal.

Under the authority of Casey vs. State (Tex. Civil appeals) 269 SW 428, writ of error denied, and former rulings of this Department, such premium on the deputy tax collector's bond prior to the amendment of Article 3899, effective January 1, 1936, was not such item of expense as the Commissioners' Court would be authorized to pay.

You are respectfully advised, therefore, that it is the opinion of this Department that any payment or expenditure of refunding the premium on the deputy tax assessor-collector's official bond for the years 1925-1936 would be illegal.

Permit us to herein set forth certain portions of Article 3899 as amended, effective January 1, 1936:

"Art. 3899. Expense Account

(a) At the close of each month of his tenure of office each officer named herein who is compensated on a fee basis shall make as part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, premiums on officials' bonds, including the cost of surety bonds for

his Deputies, premium on fire, burglary, theft, robbery insurance protecting public funds, traveling expenses and other necessary expenses... Such expense account shall be subject to the audit of the County Auditor; if any, otherwise by the Commissioners' Court; and if it appears that any item of such expense was not incurred by such officer or such item was not a necessary expense of office, such item shall be by such auditor or court rejected, in which case the collections of such item may be adjudicated in any court of competent jurisdiction. The amount of salaries paid to Assistants and Deputies shall also be clearly shown by such officer, giving the name, position and amount paid each; and in no event shall any officer show any greater amount than actually paid any such Assistant or Deputy. The amount of such expenses, together with the amount of salaries paid to Assistants, Deputies and Clerks shall be paid out of the fees earned by such officer .....

"(b) Each officer named in this Act, where he receives a salary as compensation for his services, shall be empowered and permitted to purchase and have charged to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premium on fire, burglary, theft, robbery insurance protecting public funds and including the cost of surety bonds for his Deputies, such expenses to be passed on, pre-determined and allowed in kind and amounts, as nearly as possible, by the Commissioners' Court one each month for the ensuing month, upon the application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the County Auditor, if any otherwise the County Treasurer, only as to whether funds are available for payment of such expenses.....

".....Each officer shall, at the close of each month of his tenure of office, make an itemized and sworn report of all approved expenses incurred by him and charged to his county, accompanying such report with invoices covering such purchases and re-

quisitions issued by him in support of such report. If such expenses be incurred in connection with any particular case, such report shall name such case. Such report, invoices and requisitions shall be subject to the audit of the County Auditor, if any, otherwise by the Commissioners' Court, and if it appears that any item was not incurred by such officer, or that such item was not a necessary or legal expense of such office, or purchased upon proper requisition, such item shall be by said County Auditor or court rejected, in which case the payment of such item may be adjudicated in any court of competent jurisdiction. All such approved claims and accounts shall be paid from the Officers' Salary Fund unless otherwise provided herein."

It is evident that the Legislature intended that such conditions contained in the above provisions should be complied with by the officer as a condition precedent to allowing, as a matter of right, such expenses as authorized therein.

It is our opinion that Article 3899, as amended, can be liberally interpreted to allow such officials, as an item of expense, the premium on the bonds of their authorized deputies.

Such conditions found in the provisions of the Article quoted seem to be substantially the same as contained in the article prior to the amendment and the courts have construed such conditions not intended as a limitation on the power of the Commissioners' Court in matters of this kind. As it appears that the Commissioners' Court may use its sound discretion as to whether or not the facts other than the failure of the officer to comply with the above provisions would entitle such expense to be allowed, we are further of the opinion that while the county could not be held liable for the expenditure of refunding the actual and necessary premium paid on the deputy tax collector's official bond for the years 1936 and subsequently it is within their sound discretion whether or not such payment could be made, the exercise of which by the Commissioners' Court would not be illegal.

Trusting that the above answers your questions, we remain

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Very truly yours  
ATTORNEY GENERAL OF TEXAS

By s/ Wm. R. King  
Assistant

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APPROVED:  
S/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS