OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

February 16, 1939

Hon. L. P. Heard
County Auditor
Bell County
Belton, Texas

Dear Sir:

Opinion No. O-351 - Amended
Re: Premium on official bond of deputy of county official.

The receipt of your letter of February 11th is hereby acknowledged and which reads, in part, as follows:

> "Will you please advise me, your opinion on whether or not a County official, has the right or authority, to have his deputies placed under Bond without the consent of the Commissioners' Court, and file Claim for the payment of the premium on same, and being mandatory that the same be paid out of the Officers Salary fund.
>
> "Or if the same has been consented to by the Commissioners' Court, can the same be paid from the Officers Salary fund, or does each deputy have to pay the premium on his own bond."

Permit us to call your attention to Article 3899, of the Revised Civil Statutes, 1925, and particularly, Section b, as amended, in that we assume that the county official referred to is a salary official as authorized in Article 3883. We herein quote in part, Section b of Article 3899;

> "(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

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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 once each month for the ensuing month, upon the application by each officer, stating the kind, probably 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. . . .

"Such purchases shall be made by each officer, when allowed, only by requisition in manner provided by the County Auditor, if any, otherwise by the Commissioners' Court, 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 requisitions 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."

Article 3902 is, in part, as follows:

"Whenever any district, county or precinct officer shall require the services of deputies, assistants or clerks in the performance of his duties he shall apply to the County Commissioners' Court of his county for authority to appoint such deputies, assistants or clerks, stating by sworn application the number needed, the position to be filled and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts from fees, commissions and compensation to be collected by said office during the fiscal year and the probable disbursements which shall include all salaries and expenses of said office; . . . ."

It will be seen by the wording of said act that the premium on the deputy's official bond may be charged to the county as an item of reasonable expense and that under the provisions of said article, this premium may be paid out of the Officers' Salary Fund.

Also from the above provisions, it is evident that the Legislature intended that the conditions contained in the above part of Article 3899 should be complied with by the official as a condition precedent to allowing, as a matter of right, such expenses as authorized therein. Where, however, such deputies are authorized under the provisions of Article 3902 supra, such authorization would no doubt raise an implied consent on the part of the Commissioners' Court to allow the premium on the deputies official bond, assuming of course that such expense is reasonable.

It is, therefore, the opinion of this Department that where the statutes authorize deputies of such county officials as mentioned in Article 3883 to give bond, that the consent of the Commissioners' Court must be obtained or the above conditions must be complied with before such official can, as a matter of right, demand payment, as an item of expense, the premium of such deputy's bond. The allowance of such expense rests within the sound discretion of the Commissioners' Court and such conditions in said provision, as applicable to the Commissioners' Court, do not limit the exercise of this discretion or make it mandatory on their part to allow such expense. However, assuming such expense is reasonable and the conditions in Article

3899 have been complied with by the officers, mandamus will lie to compel the Commissioners' Court to pay same. We know of no other fund other than the Officers' Salary Fund out of which such expense may be paid.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (s) Wm. J. R. King
Assistant

WK:bbb

APPROVED:

(s) W. F. Moore
First Assistant Attorney General