



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 21, 1939

Mr. E. F. Jennings
County Auditor
Hardin County
Kountze, Texas

Dear Sir:

Opinion No. 0-411
Re: Compensation of County Treasurer
under Article 3941, Revised Civil
Statutes, 1925.

Referring to your letter of March 2nd, we beg to advise that your request for an opinion upon the following question contained in your letter has received our attention:

"Under the statutes allowing County Treasure compensation is the commissioners' court vested with the authority to advance or allow compensation unearned based as to one, two, or three months bears to the annual compensation fixed by the statutes?"

"Or more fully explained if the County Treasure is to be paid commissions or compensation at the rate of \$166.66, and \$166.67 monthly, would the commissioners' court have the authority to pay or advance the \$66.66 or \$66.67 on each of the months remaining in the year after two or three monthly compensations of \$166.66 have been paid?"

The following statutory provisions, or relative parts thereof, pertain to the compensation of the County Treasurer:

"Art. 3941. The county treasurer shall receive commissions on the moneys received

and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office."

"Art. 3943. The commissions allowed to any County Treasurer shall not exceed Two Thousand Dollars (\$2000) annually;...."

The case of Davenport et al vs. Eastland County, reported in 60 SW 243, the Supreme Court construed the above provision as to the intention of the Legislature with reference to compensation of the County Treasurer, to give to the County Treasurer \$2,000.00 per annum, to be paid out of fees which might be fixed by the Commissioners' Court, if such fees should amount to that sum. This case, we think, clearly designates when this compensation is earned or payable by stating that same should be treated as if the County Treasurer were on a salary of \$2,000.00 a year, and be given his proportionate part of such salary for the length of time he was engaged in serving the county, provided the fees accruing during the time should be equal to that proportion of the whole salary.

It appears from the Davenport case, supra, that the compensation of the County Treasurer as fixed by statute is based upon the length of time served, regardless of when commissions are earned. We are unable to find any statutory authority for the Commissioners' Court to advance salary or make a loan of public funds. In fact, Section 52 of Article 3 of the Constitution of Texas prohibits the county from lending its credit or funds.

It is, therefore, the opinion of this Department that under the statutory provisions allowing the

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County Treasurer commissions, limiting same not to exceed \$2,000.00 annually, the Commissioners' Court is unauthorized to advance or allow compensation un-earned based proportionately as one, two or three months bears to the annual maximum compensation.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By


Wm. J. King
Assistant

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APPROVED:


FIRST ASSISTANT
ATTORNEY GENERAL OF TEXAS