



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

March 29, 1939

Mr. J. L. Crosthwait
County Auditor
Dallas, Texas

Dear Sir:

Opinion No. O-412

Re: What disposition is to be made of
fees other than those provided
for by Article 3912e, Section 1,
in counties on a salary basis?

Your request for an opinion on the above stated question has been received by this office.

We quote from your letter as follows:

"The question has arisen in Dallas County among the various officials who were heretofore compensated on a fee basis but are now compensated on a salary basis, as provided by Article 3912-E, Revised Civil Statutes, as to whether or not said officials are entitled to receive from the County certain fees which would have been earned if they were compensated on a fee basis - such as fees in criminal cases formerly paid by the State, fees in misdemeanor cases formerly paid by the County to Precinct Officers, and other fees which would be earned by them prior to the enactment of the salary law. Of course such fees would be credited on their books and returned to the officers' salary fund.

.....
"All District, County and Precinct Officers in Dallas County are now compensated on a salary basis."

Article 3912e-1, Revised Civil Statutes, provides for the salaries and sets out the amount of such

salaries of certain designated district, county and precinct officers in counties having the population of 300,000 inhabitants or more and less than 355,000 inhabitants, according to the last preceding Federal census. We are informed by the Comptroller's office that Dallas County has a population of 325,691 inhabitants, according to the last preceding Federal census. Therefore, Dallas County comes within the population bracket set forth in Article 3912e-1, supra.

The abovementioned statute further provides that such officers shall receive such salaries in lieu of any and all compensation now provided by law and that all such salaries enumerated in this subsection shall be paid out of the general funds of such counties.

Sections 1 and 5 of Article 3912e, Revised Civil Statutes, read as follows:

"Sec. 1. No district officer shall be paid by the State of Texas any fees or commission for any service performed by him; nor shall the State or any county pay to any county officer in any county containing a population of twenty-thousand (20,000) inhabitants or more according to the last preceding Federal Census any fee or commission for any service by him performed as such officer; provided, however, that the assessor and collector of taxes shall continue to collect and retain for the benefit of the Officers' Salary Fund or funds hereinafter provided for, all fees and commissions which he is authorized under law to collect; and it shall be his duty to account for and to pay all such monies received by him into the fund or funds created and provided for under the provisions of this Act; provided further, that the provisions of this Section shall not affect the payment of costs in civil cases by the State, but all such costs so paid shall be accounted for by the officers collecting the same, as they are required under the provisions of this Act, to account for fees, commissions and costs collected from private parties."

"Sec. 5. It shall be the duty of all

officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer."

Section 1, Article 3912c, supra, by its terms specifically provides that no district officer shall be paid by the State of Texas any fees or commissions for any services performed by him nor shall the State of any county pay to any county officer in any county containing a population of 20,000 inhabitants or more, according to the last preceding Federal census, any fee or commission for any service by him performed as such officer.

Section 5 of this statute provides that it shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official services performed by them and that

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such fees, if and when collected, shall be deposited in the Officers' Salary Fund or funds provided in this act.

In view of the foregoing statutes you are respectfully advised that it is the opinion of this Department that no fee or commission can be legally paid to any official who receives a salary in lieu of any and all compensation now provided for by law but that all fees and commissions which such officers are authorized under law to collect shall be paid into the Officers' Salary Fund or funds hereafter provided for.

Trusting that the foregoing answers your inquiry, we remain

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

Ardell Williams
Assistant

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APPROVED:

FIRST ASSISTANT ATTORNEY GENERAL