



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

April 8, 1939

Hon. Charles R. Martin  
County Auditor  
Harrison County  
Marshall, Texas.

Dear Sir:

Opinion No. 0-449  
Re: Procedure of State Comptroller  
in allocating Legislative Approp-  
riation to county Officer's  
Salary Fund for county attorney  
performing duties of district  
attorney and criminal district  
attorney.

This will acknowledge receipt of the inquiry submitted by you on March 8, 1939, relative to the above stated matter. We regret our failure to answer you sooner due to much pressing business of this Department, and hope the delay has not unduly inconvenienced you.

In your letter of inquiry you set out Article 3012-a, Sec. 15, subsection a, Vernon's Revised Civil Statutes, being the same as Sec. 15-(a) of S. B. No. 5, Ch. 465, General and Special Laws of the Forty-Fourth Legislature at its Second Called Session, p. 1762 at p. 1772. This reads as follows:

"(a) The compensation of a criminal district attorney, or county attorney who performs the duties of district attorney, together with the compensation of his assistants, shall be paid out of the county Officer's Salary Fund, but the State shall pay into such fund each year an amount equal to a sum which bears the same proportion to the total salary of such criminal district attorney, or county attorney performing the duties of a district attorney, together with

Hon. Charles R. Martin, April 8, 1939, Page 2

the salary of his assistants, as all felony fees collected by such official during the year of 1935 bear to the total fees collected by such official during such year."

Your letter contains the following paragraph:

"This statute is a little confusing to me, and I would appreciate an opinion from your Department just how the Comptroller's office properly allocate the appropriation by the Legislature payable to the Officer's Salary Fund for the county attorney's office."

We take it you wish our opinion as to whether the procedure followed by the Comptroller's office is legal and is a correct application of the statute hereinabove quoted.

You did not set out the procedure followed by the Comptroller, hence we interviewed Mr. Beale in charge of that phase of the Comptroller's work. From him we received information that the county attorney of Harrison County in 1935 collected a total of \$8,857.89, of which \$3,533.00 was collected from the state in felony cases, while other fees amount to \$5,524.89. This made the percentage paid by the State for felony cases 37.62 per cent of the total collected.

As submitted to the Comptroller, the total salaries of the county attorney's office for 1939 is \$6,950.00, a total reached by addition of the salary of the county attorney (\$4,250.00) to that of his two assistants (\$1,800.00 and \$900.00).

The Comptroller takes the percentage arrived at as shown above, 37.62 per cent of \$6,950.00, which is \$2,614.59, the amount due by the State to Harrison County for the year 1939, under the provisions of the article of the statute under consideration.

But, we learn further from the Comptroller, while under the provisions of the statute quoted, \$2,614.59 is due Harrison County, there is a total of some thirty-

Hon. Charles R. Martin, April 8, 1939, Page 3

three counties in this State in the same category, i. e., with county attorneys performing the duties of district attorneys, or criminal district attorneys. By the same process detailed above as applicable to Harrison County, each county participating is allowed its percentage of the amount collected in 1935, and when this is done and the allowable under the provisions of Sec. 15(a), supra, are added, the total amount due by the State for 1939 is \$200,922.30. However, the appropriation of money by the Legislature is only \$146,429.00 (General and Special Law, 45th Legislature, Regular Session, p. 1165). This being some \$54,000.00 less than due all of the counties under Article 3912-e, Sec. 15, supra, or only 72.878 per cent thereof, and it has been the practice of the Comptroller to pay each county that percentage of the amount due it under the law.

Therefore, the Comptroller, finding under the facts mentioned above that Harrison County is entitled to \$2,614.59 under the provisions of Article 3912-e, supra, issued its quarterly voucher for one-fourth of 72.878 per cent of that amount, or \$476.36 for the quarter January, February and March of this year. A like amount will be payable at the end of each remaining quarter of the year, until the appropriation made by the Legislature for the year is exhausted. In other words, Harrison County and each of the other counties similarly situated will receive only 72.878 per cent of the amount provided by Article 3912-e, supra, for the reason the Legislature failed by 27.122 per cent to appropriate enough money to meet the obligations of the State imposed by its own law.

There is no redress for this situation except by appeal to the Legislature, as it is a fundamental proposition that no money may be drawn from the State Treasury except upon specific appropriation. See Article 8, Sec. 6, Constitution of Texas; Pickle vs. Finley, 44 SW 460; Manion vs. Lockhart, 114 SW (2nd) 216.

While there are no court decisions construing the provisions of paragraph (a), Article 3912-e, supra, we are of opinion the Comptroller is properly applying the

Hon. Charles R. Martin, April 8, 1939, Page 4

statute, and we approve said procedure as outlined in  
this opinion insofar as its legality is concerned.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

*Benjamin Woodall*  
Benjamin Woodall  
Assistant

BW:AW

APPROVED:

*George C. Mammey*  
ATTORNEY GENERAL OF TEXAS

*myh*