



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
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ATTORNEY GENERAL

April 28, 1939

Honorable Geo. H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-651

Re: Whether the Criminal District Attorney of Gregg County is entitled to receive a constitutional salary of \$500.00 from the State in addition to the compensation provided in Article 3912e, Section 15, Revised Civil Statutes.

We are in receipt of your letter of April 18, 1939, wherein you request our opinion as to whether the criminal district attorney of Gregg County is entitled to receive an annual constitutional salary of \$500.00 from the State of Texas, additional to the salary provided in Article 3912e, Revised Civil Statutes.

The Legislature of Texas, in 1931, by House Bill 49, Chapter 23, Acts First Called Session, 42nd Legislature, created the 124th Judicial District for Gregg County, and in "prescribing the organization thereof" created the office of Criminal District Attorney. The court was created for a period of four years and would have expired on August 12, 1933. By House Bill 226, Chapter 4, Acts 44th Legislature, 1935, the Legislature made permanent the District Court for the 124th Judicial District, and in addition created an additional District Court of Gregg County, known as the Special District Court for Gregg County, Texas, to expire four years from the effective date of the Act, January 25, 1935. The Legislature by House Bill 82, Chapter 34, Acts, Forty-fifth Legislature, 2nd Called Session, 1937, extended the expiration date of the Special Court to January 25, 1943. Both of these Gregg County District Courts are in continuous session.

Section 20, of Chapter 4, Acts 44th Legislature, provided:

"The Criminal District Attorney for the One Hundred Twenty-fourth Judicial District of Texas shall receive the same fees allowed by law for County Attorneys in misdemeanor cases, and shall in addition to the Constitutional

salary of Five Hundred Dollars per annum allowed to District Attorneys, to be paid by the State of Texas in the manner provided by law for paying the salary of District Attorneys, be paid the same fees which are now allowed and paid to County and District Attorneys in counties where less than three thousand votes were cast at the preceding presidential election."

Section 21 of Article 5 of the Constitution of Texas, provides as follows:

"A county attorney, for counties in which there is not a resident criminal district attorney shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of two years. In case of vacancy the commissioners court of the county shall have the power to appoint a county attorney until the next general election. The county attorney shall represent the state in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district and county attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts as may be deemed necessary, and make provisions for the compensation of district attorneys and county attorneys; provided, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the state, and such fees, commissions and perquisites as may be provided by law."

On August 24, 1935, the people of Texas adopted Section 61 Article 16 of the Constitution reading as follows:

"All district officers in the State of Texas and all county officers in counties having a population of 20,000 or more, according to the then last preceding Federal Census, shall from the first day of January and thereafter and subsequent to the first Regular or Special Session of the Legislature after the adoption of this Resolution, be compensated on a salary basis. In all counties in the State, the Commissioners Court shall be authorized to determine whether precinct officers shall be compensated on a fee basis or on a salary basis; and in counties having a population of less than 20,000 according to the then last preceding Federal Census, the Commissioners Court shall also have the authority to determine whether county officers

shall be compensated on a fee basis or on a salary basis"

Article 3912e, Section 15, reads in part as follows:

"Sec. 15. The Commissioners' Court in counties having a population of less than twenty thousand (20,000) inhabitants, according to the last preceding Federal Census at the first regular meeting in January of each calendar year, may pass an order providing for compensation of all county and precinct officers on a salary basis. The Commissioners' Court in each of such counties is hereby authorized, and it shall be its duty, to fix the salaries of Criminal District Attorneys. In the event such Court passes such order they shall pay to each of said District and County officers in money an annual salary in twelve (12) equal installments of not less than the total sum earned as compensation by said officer in his said official capacity for the fiscal year of 1935 and not more than the maximum allowed such officer under laws existing August 24th, 1935,

"(a) The compensation of a Criminal District Attorney, or County Attorney who performs the duties of District Attorneys, together with the compensation of his assistants, shall be paid out of the County Officers' 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 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."

Article 3912e, Revised Civil Statutes, was enacted for the purpose of carrying into effect said Section 61 of the Constitution of Texas. We are advised that Gregg County has a population of less than 20,000 inhabitants according to the last Federal Census. From the information given us, we also understand that the criminal district attorney of Gregg County is receiving the full compensation provided in Section 15 of said Article 3912e.

From said Article 3912e, Section 15, it appears that the commissioners' court in each county of less than 20,000 inhabitants is authorized to fix the salaries of all district and county officers, and is required to fix the salary of the criminal district attorney. The amount of the salary is not to be less than the total sum earned as compensation by an officer

in his official capacity for the fiscal year of 1935 and not more than the maximum allowed him under laws existing August 24, 1935. The total sum earned by the criminal district attorney of Gregg County in the year 1935 included the constitutional salary of \$500.00, and he has already had the benefit of that fact in the fixing of his salary. The statute further provides that the compensation of the criminal district attorney shall be paid out of the County Officers' Salary Fund.

It is quite clear that it was intended for the salary of a criminal district attorney of a county having a population of less than 20,000 inhabitants to be fixed by Section 15 of Article 3912e. To allow him an additional \$500.00 to be paid out of the General Fund of the State would be to give him a \$500.00 salary advantage over all other district and county officers, and it would be to allow the fixing of his maximum as being \$500.00 more than the maximum allowed him under laws existing August 24, 1935. Manifestly such was not the purpose of the Statute. Furthermore, that Article provides that the compensation of the criminal district attorney shall be paid out of the County Officers' Salary Fund. Nothing is said about paying \$500.00 of it out of the State Treasury.

In spite of the fact that the Legislature has plainly provided, or attempted to provide, that his salary shall be fixed at not less than the total sum earned by him for the fiscal year of 1935 (including the \$500.00 constitutional salary) and not more than the maximum amount allowed him under laws existing August 24, 1935, is the criminal district attorney to receive an additional \$500.00 by reason of the provisions in Section 21 of Article 5 of the Constitution? We think not. The officer is receiving the salary fixed for him. It does not appear to us to be of great importance whether a particular \$500.00 of such salary comes from the State Treasury or from the County Officers' Salary Fund. We quote from the opinion of Chief Justice Phillips in the case of Bexar Co. vs. Linden, 220 S.W. 761, as follows:

"It was within the Legislature's power, in our opinion, to provide for the disposition of the excess fees of District Attorneys as is done by the Statute. We do not regard the disposition made as in any sense a grant of public money. The statute is in our view, therefore, a valid enactment.

"This holding is based upon the relation which the counties of the State bear to the sovereignty of the State; upon their character as mere political subdivisions of the State; created for the convenience of the

people and for the purposes of local government, but for the exercise of essentially State powers as distinguished from municipal powers; and, with their conferred powers having the nature of duties rather than privileges. existing as but agencies of the State for the effective discharge through local officers of the governmental obligations of the State.

"The use of the counties of the State as a means of government is a use by the State and for the State as a sovereignty. The effect of the statute, in association with other provisions of law is to set apart the excess fees of District Attorneys and other officials as State funds for the governmental purposes of the State with whose execution the counties, as instrumentalities of the State, are charged. Such a dedication is in no true sense a grant of public money. It is but an appropriation of funds of the State for the uses of the State. It is therefore a constitutional use, having no character of a bounty or gratuity."

We cite also the case of *Aransas Pass vs. Keeling*, 247 S.W. 818, by the Supreme Court, upholding the use by the State of a City as an appropriate agency through which the State could discharge a duty resting upon it. We quote from the opinion:

"Cities or counties furnish convenient and appropriate agencies through which the state may perform duties resting on the State, in the performance of which the cities or counties have a special interest. The use of the cities or counties as agents of the state in the discharge of the state's duty is in no wise inhibited by the Constitution in section 51 of article 3."

In the case under consideration the payment of the criminal district attorney's salary out of the officers' Salary Fund answers the requirement of Article 5, Section 21 of the Constitution. No harm befalls the criminal district attorney in the payment of his salary out of the County Officers' Salary Fund and in the selection of the county as the agency of the State to make payment of such salary.

We, therefore, answer your question by saying that the criminal district attorney in question is not entitled to be paid \$500.00 by the State in addition to the salary provided in Article 3912e, Section 15, Revised Civil Statutes.

Hon. Geo. H. Sheppard, April 28, 1939, page 6

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Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Glenn R. Lewis
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Assistant

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APPROVED
s/Gerald C. Mann
ATTORNEY GENERAL OF TEXAS