



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Hon. George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. O-2082

Re: Maximum compensation of Sheriff -  
Tax Assessor-Collector in counties  
of less than 25,000 inhabitants -  
Ex officio compensation of Sheriff -  
Tax Assessor-Collector in such  
counties.

Your request for opinion has been received and carefully considered by this department. We quote from the letter of the Sheriff-Tax Assessor-Collector to you which you enclosed, as follows:

"Craws County has a population under 25,000 inhabitants and therefore the Sheriff, Tax Assessor and Collector is under one and the same office. The Commissioners' Court for the year 1939 as per the minutes of said court allowed the sheriff an annual ex-officio salary of \$1,000.00 payable monthly as authorized by Article 3934. This amount was paid the sheriff out of the general fund of the county. The office collected also something over \$6500.00 in fees. In figuring the sheriff, tax assessor and collectors fees for 1939 the \$1000.00 paid under Article 3994 was included in the maximum fees allowed. In other words the office collected enough fees to pay the maximum fees under Article 3885 of \$3000.00 (this including the \$600.00 of excess fees allowed under Art. 3891, but in figuring the maximum fees the auditor for the county contends that the \$1000.00 allowed the sheriff under Art. 3934, Sec. 2, for summoning jurors in

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district and county court, serving all elections notices, etc. as ex officio salary and paid out of the general fund of the county should be figured in along with the other fees of office in computing the maximum fees of \$3000.00 which Art. 3883 and Art. 3891 authorizes him to receive. But the Sheriff, Tax Assessor and Collector contends that this \$1000.00 as ex officio salary allowed him under Art. 3934 for performing the duties specified under said Article as sheriff should not be added in as a part of the fees authorized under Art. 3883 and 3891. In other words he contends that he should receive the \$1000.00 as ex officio salary as sheriff, since it was allowed by the commissioners court, and also the \$3000.00 of maximum fees allowed under Article 3883 for assessing and collecting. Sheriff, Tax Assessor-Collector in surrounding counties under 25,000 population are receiving the \$1000.00 ex officio, besides maximum fees for collecting and assessing as contended by this office."

Section 18 of Article 8 of the Texas Constitution reads as follows:

"The sheriff of each county, in addition to his other duties, shall be the assessor and collector of taxes therefor; but, in counties having ten thousand (10,000) or more inhabitants, to be determined by the last preceding census of the United States, an assessor and collector for taxes shall be elected to hold office for two (2) years, and until his successor shall be elected and qualified."

Article 7246, Revised Civil Statutes, reads as follows:

"In each county having less than ten thousand (10,000) inhabitants, the sheriff of such county shall be the assessor and collector of taxes, and shall have and exercise all the rights, powers and privileges,

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be subject to all the requirements and restrictions, and perform all the duties imposed by law upon assessors and collectors; and he shall also give the same bonds required of a collector of taxes elected."

Article 3883, Revised Civil Statutes, reads in part as follows:

"Except as otherwise provided in this act, the annual fees that may be retained by precinct, county and district officers mentioned in this article shall be as follows:

"1. In counties containing twenty-five (25,000) thousand or less inhabitants: County Judge, District or Criminal District Attorney, Sheriff, County Clerk, County Attorney, District Clerk, Tax Collector, Tax Assessor, or the Assessor, or the Assessor and Collector of Taxes, Twenty-four Hundred (\$2400.00) Dollars each; Justice of the Peace and Constable, Twelve Hundred (\$1200.00) Dollars each."

Article 3891, Revised Civil Statutes, reads in part as follows:

"Each officer named in this chapter shall first out of the current fees of his office pay or be paid the amount allowed him under the provisions of Article 3883, together with the salaries of his assistants and deputies, and authorized expenses under Article 3899, and the amount necessary to cover costs of premium on whatever surety bond may be required by law. If the current fees of such office collected in any year be more than the amount needed to pay the amounts above specified, same shall be deemed excess fees, and shall be disposed of in the manner hereinafter provided:

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"In counties containing twenty-five thousand (25,000) or less inhabitants, District and County officers named herein shall retain one-third of such excess fees until such one-third, together with the amounts specified in Article 3883, amounts to Three Thousand Dollars (\$3000). Precinct officers shall retain one-third until such one-third, together with the amount specified in Article 3883, amounts to Fourteen Hundred Dollars (\$1400).

"....

"The compensations, limitations and maximums herein fixed in this Act for officers shall include and apply to all officers mentioned herein in each and every county of this State, and it is hereby declared to be the intention of the Legislature that the provisions of this Act shall apply to each of said officers, and any special or general law inconsistent with the provisions hereof is hereby expressly repealed in so far as the same may be inconsistent with this act.

"The compensation, limitations and maximums herein fixed shall also apply to all fees and compensation whatsoever collected by said officers in their official capacity, whether accountable as fees of office under the present law, and any law, general or special, to the contrary is hereby expressly repealed. The only kind and character of compensation exempt from the provisions of this Act shall be rewards received by Sheriffs for apprehension of criminals or fugitives from justice and for the recovery of stolen property, and moneys received by county judges and justices of the peace for performing marriage ceremonies, which sum shall not be accountable for and not required to be reported as fees of office."

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Article 3895, Revised Civil Statutes, reads as follows:

"The commissioners' court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided in this chapter, the commissioners' court shall allow compensation for ex officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. Provided, however, the ex officio herein authorized shall be allowed only after an opportunity for a public hearing and only upon the affirmative vote of at least three members of the commissioners' court." (underscoring ours)

Article 3934, Revised Civil Statutes, reads as follows:

"Sheriffs shall also receive the following compensations:

"1. For all process issued from the Supreme Court or Courts of Civil Appeals and served by them, the same fees as are allowed them for similar service upon process issued from the district court.

"2. For summoning jurors in district and county courts, serving all election notices, notices to overseers of roads and doing all other public business not otherwise provided for, not exceeding one thousand dollars per annum to be fixed by the commissioners' court

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at the same time other ex officio salaries are fixed, and to be paid out of the general funds of the county; provided, that no such ex officio salary shall be allowed any Sheriff who had received the maximum salary allowed by law." (underscoring ours)

This department has repeatedly held that the office of Sheriff and Tax Collector in counties having a population of less than 10,000 inhabitants is one inseparable office under the Constitution. See opinion No. 1713, dated March 2, 1917, written by Hon. O. W. Taylor and Hon. C. M. Cureton, Assistants Attorney General, recorded in Vol. 49, Page 14, Records of the Attorney General of Texas.

This department has repeatedly held that in counties having a population of less than 10,000 inhabitants where the office of Sheriff-Tax Assessor-Collector is combined in one office and held by one officer that said officer is entitled to retain only one maximum salary and is not entitled to three maximums. See opinion of this department, dated June 29, 1936, written by Hon. Joe J. Alsup, Assistant Attorney General, and recorded in Vol. 372, page 458, Letter Opinions of the Attorney General of Texas.

The case of Tarrant County vs. Smith (Civ. App.- Writ of Error refused) 81 SW 2d 537, holds that a sheriff who had already earned the maximum compensation allowed by law was required to return amount collected as ex officio compensation, although such sum had been ordered paid by commissioners' court. We quote from said case as follows:

"The Sheriff was paid in advance in 1928 by the commissioners' court \$800 as ex officio fees for summoning jurors. R.S. Art. 3934. That year he made his maximum compensation of \$5000 exclusive of that \$800. In such event it was his duty, under such above statute, to return the \$800 to the county. He did not do so. This holding

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does not amount to setting aside the judgment of the commissioners' court which ordered the \$800 paid. We assume that judgment to be valid. By the subsequent events, to-wit, the collection otherwise and thereafter of the maximum pay, Mr. Smith became obligated to return that money."

You are respectfully advised that it is the opinion of this department that the sum of Three Thousand (\$3000.00) Dollars is the maximum amount that the Sheriff-Tax Assessor-Collector of Crane County is allowed to retain for the year 1939 under the facts stated in your letter. The sheriff would not be entitled to any ex officio salary in such instance but if it had been paid to him he would be required to return it to the county. Any and all sums in excess of \$3000.00 received by the sheriff should be returned to the county.

Trusting that this satisfactorily answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By *Wm. J. Fanning*  
 Wm. J. Fanning  
 Assistant

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APPROVED MAR 22, 1940

*Gerald B. Mann*

ATTORNEY GENERAL OF TEXAS

