



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**GERALD C. MANN**

~~XXXXXXXXXXXX~~  
**ATTORNEY GENERAL**

Honorable W. Lee O'Daniel  
Governor of Texas  
Austin, Texas

Dear Governor O'Daniel:

Opinion No. O-3110

Re: Whether or not a County Surveyor holding office under the laws of the State of Texas may also serve as a member of the Board of Examiners of the Land Surveyors under the provisions of Article 5268 R. C. S., and under the provisions of the Texas Constitution.

We acknowledge receipt of your letter of January 31, 1941, propounding for a legal opinion the questions stated above.

Section 40 of Article XVI of the Constitution declares:

"No person shall hold or exercise, at the same time, more than one civil office of emolument, \* \* \*"

There are several specific exceptions made in the Section, but none of them is material to the present inquiry.

Article 5283 of the statute provides for the election of a County Surveyor for a term of two years. Article 5284 requires an official bond for the faithful performance of the duties "of his office", and Article 3944 fixes his official fees.

Before the above Section of the Constitution could apply, however, it would further be necessary that a member of the Board of Examiners for license as land surveyors would be likewise holders of a civil office of emolument. It is not enough that one of the offices be an office of emolument and the other a nonsalaried office, or one without emolument. (See *Graves v. M. Griffin O'Neil & Sons*, 189 S. W. 778).

Undoubtedly, a member of the Board of Examiners of Land Surveyors holds an office under the State of honor and trust, but it does not appear to be one of emolument. Article 5281 of Ch. 2 of our civil statutes, dealing with surveyors and surveys, declares:

"The sum received by the Board or so much thereof as may be necessary shall be used to defray the actual expenses incurred by the members of said Board in the execution of this law, and the remainder shall be deposited annually in the State treasury. No appropriation shall ever be made to defray the expense of said Board or to carry into effect any provisions of this law."

From this it follows that a County Surveyor in Texas is not thereby disqualified from holding at the same time membership in the Board of Examiners of Land Surveyors.

Very truly yours

ATTORNEY GENERAL OF TEXAS

s/ Ocie Speer

By

Ocie Speer  
Assistant

OS:mr/ ldw

APPROVED FEB. 12, 1941

s/ GERALD C. MANN

ATTORNEY GENERAL OF TEXAS

APPROVED OPINION COMMITTEE

BY B. W. B.

CHAIRMAN