

OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

Gerald C. Mann  
Attorney General

Honorable C. H. Gilmer, Chairman  
Committee on Judiciary and Uniform State Laws  
House of Representatives  
Austin, Texas

Dear Sir:

Opinion No. 0-3339  
Re: Constitutionality of Senate  
Bill No. 184 fixing compensa-  
tion of court reporters of  
Bexar County, Texas.

This is in reply to your letter of March 26, 1941,  
requesting the opinion of this department on the following  
questions:

"1. Does the bill violate Section 56  
of Article 3 of the Texas Constitution?

"2. Does the bill violate any provi-  
sion of the Texas Constitution in author-  
izing the salaries of the court reporters  
of Bexar County to be paid out of the Jury  
Fund of said county?"

Senate Bill No. 184 provides for the appointment  
and fixes the compensation of court reporters in each District  
Court, Criminal District Court, and County Court at Law of  
Bexar County, Texas. This compensation is to be paid monthly  
by the commissioners' court out of the general fund or the  
jury fund of Bexar County as the commissioners' court may  
elect. It is admittedly a local law applying only to Bexar  
County, Texas. The notice prerequisite to the passage of a  
local law required by the Constitution of Texas and Article  
2 of Title 1 of the Revised Civil Statutes has been given.  
Our inquiry is directed to its constitutionality.

Section 56 of Article 3 of the Constitution of  
Texas reads, in part, as follows:

"The Legislature shall not, except as  
otherwise provided in this Constitution, pass  
any local or special law, authorizing:

\* \* \* \*

"Regulating the affairs of counties,  
\* \* \* ;

"And in all other cases where a general  
law can be made applicable, no local or special  
law shall be enacted; \* \* \* ."

We have been unable to discover that the Constitution has "otherwise provided" for the passage of local or special laws relating to the compensation of court reporters. We must look to Section 56 of Article 3. If Senate Bill No. 184 is a local or special law prohibited by that section of the Constitution, it matters not that the constitutional notice prerequisite to the passage of an authorized local or special law has been given.

We are of the opinion that Senate Bill No. 184 is in the very teeth of and consequently prohibited by Section 56 of Article 3 of the Constitution of Texas. Undoubtedly Senate Bill No. 184 regulates the affairs of counties. Moreover, we find that the Legislature has already by general law dealt with the appointment, compensation and duties of court reporters. Articles 2321-2327b-1, inclusive, Vernon's Annotated Civil Statutes. The subject is therefore one about which a general law can be and has been made applicable. The following cases are in point:

Altgelt v. Gutzeit, 109 Tex. 123, 201 S.W. 400; Ward v. Harris Co. (T.C.A. 1919) 209 S.W. 792, writ refused; Austin Brothers v. Patton (Com. App. 1926) 288 S.W. 182; Kitchens v. Roberts (T.C.A. 1930) 24 S.W. (2d) 464, writ refused; Duclos v. Harris Co., 251 S.W. 569, affirmed, Sup. Ct., 114 Tex. 147, 263 S.W. 562.

In the Duclos case the Galveston Court of Civil Appeals was concerned with the validity of that portion of an Act of the Legislature reorganizing the 23rd Judicial District and creating the 80th Judicial District wherein the District Clerk of Harris County was given \$1200.00 per year additional compensation. The court said:

"As before stated, we think these declarations of the law settle the question, and that so much of this Act as attempted to award the \$1200.00 additional compensation must be held unconstitutional and void.

That a general law could be made applicable to the matter of compensating the District Clerk of Harris County is best demonstrated by citation of the fact that one existed at the time this special attempt to add to that compensation was made. By Article 3883, Revised Statutes of 1911, the maximum amount of fees the District Clerk of Harris County might retain was fixed at \$2,750.00, while by Article 3889, applying to all counties with a population in excess of 38,000, it was further provided that district clerks, among other enumerated officers, might also retain one-fourth of the excess fees collected by them until such one-fourth amounted to the sum of \$1,500.00. So that under these provisions of the general laws of the State then prevailing, the District Clerk of Harris County was limited to a total compensation of \$4,250.00 per annum. Furthermore, by Revised Statutes, Article 3891, the Legislature made clear its purpose not to permit the district clerks in those counties having more than one district court to retain their maximum of fees for services performed in each of such courts by this enactment:

"In all counties in this state having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court."

The Supreme Court granted a writ of error but affirmed the judgment of the Court of Civil Appeals, saying:

"We granted the writ of error because we questioned whether this provision granting additional compensation to this officer was special or local, in view of the fact it is a part of a law creating a district court, which is a general law. An act creating a district court is a general law, and as a matter of course the Legislature has the authority in the creating act to legislate as to all necessary provisions and essential elements of the Court; but that does not justify the inclusion of local or special laws or provisions which are in themselves subject

to general legislation, and which in fact are provided for and controlled by general laws. Such provisions, even though included in a general law, are nevertheless special and local.

"If the Legislature had, by enactment other than in the bill creating the court, attempted to increase the salary of the clerk of Harris County alone, such enactment would clearly be a special and local law, and violative of section 56, article 3. Can the fact that it is included in the provisions of a general law creating a new court in a county in which a clerk for all district courts was already provided and his compensation fixed under a general law, the same as for all other clerks in like counties, change its nature and effect from that of a special and local law? We think not. To so hold would be to look to the form and not the spirit and purpose of the law.

\*\* \* \*

"The act creating the court was essentially a general act or law. The provision providing for extra compensation of the clerk different from all other like clerks, as already provided for by the law in the Maximum Fee Bill, was essentially special and local. Under these conditions we are of the opinion that the fact that it was included within the body of the general law does not change its character, nor make it immune from the constitutional prohibition."

You are therefore advised in answer to your first question, that in our opinion Senate Bill No. 184 is a local or special law regulating the affairs of Bexar County, that it is a law concerning a subject about which a general law can be and has been made applicable; and consequently that it falls within the prohibition of Section 56 of Article 3 of the Constitution of Texas.

In view of our answer to your first question, we find it unnecessary to pass upon your second.

APPROVED APR. 10, 1941  
(s) Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Very truly yours  
ATTORNEY GENERAL OF TEXAS  
By (s) James D. Smullen  
Assistant

APPROVED  
OPINION  
COMMITTEE  
BY BWB  
CHAIRMAN