



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Melvin Combs
County Attorney
Jefferson County
Beaumont, Texas

Attention: Mr. Earl Black

Dear Sir:

Opinion No. 0-3369
Re: Can the chief deputy or first assistant in the County Clerk's office in Jefferson County, who is also head of the filing department receive in addition to the \$2600.00 salary of chief deputy the \$200.00 additional compensation provided under Art. 3902, Sec. 5, R.C.S., 1925, which has been allowed by the commissioners' court.

Your request for our opinion on the hereinabove captioned question has been received by this department. We quote from your request as follows:

"Will you please advise this office as to whether or not, Mr. T. C. Land, who is Chief Deputy or first assistant in the County Clerk's office, Jefferson County, Texas, and also the head of the filing department in said office which departmental division has been approved by the Commissioners Court, can receive in addition to the \$2600 salary of Chief Deputy or first assistant the \$200 additional compensation provided under Article 3902, Sec. 5, R.C.S., 1925, which has been allowed by the Commissioners Court.

"Mr. Land has been a deputy in that office for eight continuous years."

The official 1940 census shows that the population of Jefferson County is 145,329.

Section 5 of Article 3902, Vernon's Annotated Civil Statutes, is applicable to Jefferson County, Texas, and reads as follows:

"5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, first assistant or chief deputy not to exceed Twenty-six Hundred (\$2600.00) Dollars per annum; heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowance is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the amount herein allowed, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years; other assistants, deputies or clerks not to exceed Twenty-three Hundred (\$2300.00) Dollars per annum each." (Underlining ours)

Inasmuch as the quoted section of the statute expressly limits the compensation which may be allowed the first assistant or chief deputy to "not to exceed Twenty-six Hundred (\$2600.00) Dollars," and does not expressly mention the first assistant or chief deputy as being entitled to an additional Two Hundred (200.00) Dollars upon certain conditions, such officers would be entitled to such additional Two Hundred (\$200.00) Dollars only if it can be determined that by the underscored part of the statute the Legislature intended to allow such additional compensation to every head of a department with two years of continuous previous service irrespective of whether he is the first assistant or chief deputy or not.

We have been unable to find any Texas case defining the term "heads of departments" as used in the statute under consideration. The term appears to have been first used by the Legislature (in connection with the compensation of deputies and assistants of district, county and precinct officers) in 1913 when the Legislature amended Article 3902 of the Revised Civil Statutes of 1911. (39th Legislature, Acts of 1913, Ch. 121, 2.)

Article 3903, Revised Civil Statutes, 1911, provided, in part, as follows:

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" The maximum amount allowed for deputies and assistants for their services shall be as follows, to-wit: 'First assistant or chief deputy, a sum not to exceed a rate of Twelve Hundred (\$1200) Dollars per annum, others not to exceed a rate of Nine Hundred (\$900) Dollars per annum."

In 1913, said Article was amended (33rd Legislature, ch. 121), to read as follows:

"The maximum amount allowed for deputies or assistants for their service shall be as follows, to-wit: 'First assistant or chief deputy, a sum not to exceed a rate of Eighteen Hundred (\$1800) Dollars per annum; heads of departments, a sum not to exceed Fifteen Hundred (\$1500) Dollars per annum; others not to exceed a rate of Twelve Hundred (\$1200) Dollars per annum."

Said Article 3903, Revised Civil Statutes, 1911, was then amended in 1913 (33rd Legislature, ch. 142), in 1917 (35th Legislature, ch. 55), in 1920 (36th Legislature, 3rd Called Session, ch. 32), and in 1921 (37th Legislature, ch. 96). By these amendments the Legislature set up new population brackets under each bracket, except the lowest, allowed the chief deputy or first assistant Three Hundred Dollars (\$300.00) more than the "heads of each department," and the heads of each department Three Hundred Dollars (\$300.00) more than "other deputies and assistants."

In 1925 (39th Legislature, ch. 52), Article 3903, Revised Civil Statutes, 1911, was again amended and here, for the first time, the Legislature defined the term "head of department" providing as follows:

"Provided, that no head of a department shall be created except where the person sought to be appointed is to be in actual charge thereof, with deputies or assistants under his supervision, or a department approved by the court and only in offices capable of a bona fide subdivision into departments."

To the present time, this remains as the only Legislative definition of heads of departments. (See Section 4a of Article 3902, Vernon's Revised Civil Statutes.)

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In 1929, Article 3902 was again amended (Acts 1929, 41st Legislature, First C.S., p. 225, ch. 92), the material part reading as follows:

"Provided, that in Counties having a population in excess of 125,000 inhabitants, the maximum compensation that may be allowed such Deputies or Assistants for their services shall be as follows, to-wit:

"FIRST ASSISTANT OR CHIEF DEPUTY, not to exceed \$3000.00 per annum; provided the Commissioners' Court may increase said amount not to exceed \$3300.00 per annum, where a necessity thereof is shown and where the person to be appointed has been previously the head of a department for not less than one year or has been in the continuous service of the County for a period of not less than two years.

"Heads of Departments may be allowed by the Court, when in their judgment such are necessary, not to exceed \$2700.00 per annum, when such Heads of Departments sought to be appointed shall have previously served the County for not less than two continuous years. Other Heads of Departments shall receive not to exceed \$2400.00 per annum; provided that no Head of a Department shall be created except where the person sought to be appointed is to be in actual charge thereof, with Deputies or Assistants under his supervision, or a Department approved by the Court and only in offices capable of a bona fide subdivision into departments.

"DEPUTIES OR ASSISTANTS other than those above provided for may be allowed, the number to be determined by the Commissioners' Court, and their salaries based as far as possible on a graduate scale according to service, ability and qualification. Fifty per cent of the number so appointed may be authorized at a rate not to exceed \$2500.00 per annum, provided, such rate shall be allowed only to Deputies in service for two years or more and all other so appointed at a rate not to exceed \$2100.00 per annum."

The legislative history of the statute in question thus far, therefore, clearly indicates that the Legislature intended

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to divide deputies and assistants into three distinct groups and to compensate them on the basis of the group that they were in. The highest paid group, was the first assistant or chief deputy; the second, heads of departments; the third, other assistants or deputies. Assuming that a chief deputy or first assistant may be a head of a department, which is a question not submitted and therefore not ruled on by us in this opinion, he would nevertheless be limited to the maximum allowed chief deputies or first assistants. While this is clear from the plain language of the statute through the amendment of 1929, a more serious question arises on this point by the ambiguous language used in the amendment to Article 3902, in 1933.

The 43rd Legislature, Acts 1933, p. 734, amended that part of Article 3902 here involved, to read as follows:

"5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred fifty thousand (150,000) inhabitants; First Assistant or Chief Deputy not to exceed Twenty-six Hundred (\$2600.00) Dollars per annum; other assistants, deputies or clerks not to exceed Twenty-three Hundred (\$2300.00) Dollars per annum each.

"6. In counties having a population of one hundred fifty thousand and one (150,001) or more inhabitants; First Assistant or Chief Deputy not to exceed Three Thousand (\$3000.00) Dollars per annum; other assistants, deputies or clerks not to exceed Twenty-four Hundred (\$2400.00) Dollars each, except as otherwise provided in this Act.

"Heads of departments may be allowed by the Commissioners' Court, when in their judgment such allowable is justified, the sum of Two Hundred (\$200.00) Dollars per annum in addition to the amount hereinbefore authorized, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two continuous years; provided, that no heads of departments shall be created except where the person sought to be appointed shall be in actual charge thereof, with deputies or assistants under his supervision, or a department approved by the court, and only in offices capable of a bona fide subdivision into departments."

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It will be noted that in this amendment, the Legislature for the first time provided that "heads of departments may be allowed . . . the sum of Two Hundred Dollars per annum in addition to the amount hereinbefore authorized. . .," in place of setting a definite maximum as in prior amendments. The ambiguity of this language presented the question of whether such additional Two Hundred Dollars should be allowed to a Chief Deputy or First Assistant where such officer is also the head of a department. In view of the clear out distinction between the chief deputies or first assistants and heads of departments theretofore consistently made by the Legislature in dealing with the subject for a period of twenty years, we are of the opinion that the Legislature would have expressed itself more clearly if it had intended to include such officers within the Two Hundred Dollars additional allowance where they were also heads of departments.

That chief deputies or first assistants were not considered by the Legislature as entitled to the Two Hundred Dollars additional salary under the last paragraph of the 1933 amendment, quoted supra, appears to be obvious inasmuch as the very next Legislature (Acts 1935, 44th Legislature, p. 752, ch. 327) amended the relevant part of Article 3902, to read as follows:

"5. In counties having a population of one hundred thousand and one (100,001) and not more than one hundred and fifty thousand (150,000) inhabitants, First Assistant or Chief Deputy not to exceed Twenty-six Hundred Dollars (\$2600) per annum; other assistants, deputies or clerks not to exceed Twenty-three Hundred Dollars (\$2300.00) per annum each.

"6. In counties having a population of one hundred and fifty thousand and one (150,001) or more inhabitants, First Assistant or Chief Deputy not to exceed Three Thousand Dollars (\$3000) per annum; other assistants, deputies or clerks not to exceed Twenty-four Hundred Dollars (\$2400) each, except as otherwise provided in this Act.

"Heads of departments may be allowed by the Commissioners Court, when in their judgment such allowable is justified, the sum of Two Hundred Dollars (\$200) per annum in addition to the amount

hereinbefore authorized, whether it be chief deputy or assistant, deputy, clerk or assistant, when such heads of departments sought to be appointed shall have previously served the county or political subdivision thereof for not less than two (2) continuous years; provided, that no heads of departments shall be created except where the person sought to be appointed shall be in actual charge thereof, with deputies or assistants under his supervision, or a department approved by the Court, and only in offices capable of a bona fide subdivision into departments." (Underlining ours)

By expressly and clearly stating "whether it be chief deputy or assistant, deputy, clerk or assistant," a chief deputy or first assistant undoubtedly was entitled to the Two Hundred Dollars additional, under Article 3902, as amended by Chapter 327 of the 44th Legislature.

Several months later, however, the same Legislature (Acts 1935, 44th Legislature, Second C.S., p. 1762, ch. 465) again amended Article 3902. This amendment is Section 5 of Article 3902, applying to Jefferson County, in its present form quoted at the beginning of this opinion.

It will be noted that the language used in the clause dealing with "heads of departments" in Section 5 of Article 3902, is identical with that contained in the 1933 amendment. If the Legislature had intended to allow chief deputies or first assistants the Two Hundred Dollars additional salary, we believe it would have used the same clear language to that effect that it used in the Regular Session (Acts 1935, 44th Legislature, p. 752, ch. 327) instead of going back to the language used in the 1933 amendment by a previous Legislature.

In 39 Tex. Jur. 241, Section 128, it is stated as follows:

"In the construction of an act or provision that has been amended, re-enacted or restated, the circumstance that the original statutory language has been modified, or that it has been preserved unchanged, in certain particulars, may be taken into consideration, as an aid to the ascertainment of the legislative intent. Speaking generally, alterations

in the language of a statute must be given effect. The omission of a significant word or provision from an amendment or re-enactment indicates a desire to change the effect or interpretation of the act, or an intention to exclude the object theretofore accomplished by the words omitted."

The language used in Section 5 of Article 3902 and the legislative history of said Article, leads us to the conclusion that the statute is subject to but one construction, to-wit, that chief deputies or first assistants are not entitled to the Two Hundred Dollars additional compensation even though they are the head of a department with the necessary two years previous service.

Even if it could be conceded that the statute under consideration is capable of being construed either way, which certainly is the most that could be contended for, we would still be forced to the conclusion that the chief deputy or first assistant is not entitled to the Two Hundred Dollars additional compensation. Article 3902, being a fee statute, must be strictly construed. The rule is stated in 34 Tex. Jur. 508, Sec. 105, as follows:

"Statutes prescribing fees for public officers are strictly construed; and hence a right to fees may not rest in implication. Where this right is left to construction, the language of the law must be construed in favor of the government. Where a statute is capable of two constructions, one of which would give an officer compensation for his services in addition to his salary and the other not, the latter construction should be adopted. It is no concern of an officer that the Legislature may have been toward other officers more liberal than toward him in the matter of compensation for services; nor does this fact justify the courts in upholding his claim for compensation for services as against a fair and reasonable interpretation of the statute. In applying fee statutes and ascertaining the intent of the Legislature and the meaning of the statute, the usual methods and rules of interpretation are applicable."

You are, therefore, respectfully advised that it is the opinion of this department that, under the facts submitted,

Mr. T. C. Land is not entitled to be paid the Two Hundred Dollars additional compensation provided for in Section 5 of Article 3902, Vernon's Annotated Civil Statutes.

Very truly yours

ATTORNEY GENERAL OF TEXAS

APPROVED APR 24, 1923
Wm. R. Allen
FIRST ASSISTANT
ATTORNEY GENERAL

By

Edgar Pfeil
Edgar Pfeil
Assistant

EP:db

